United States Court of Appeals for the Second Circuit



APPENDIX

No. 74-1927

United States Court of Appeals

FOR THE SECOND CIRCUIT

SIDNEY DANIELSON, REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD, REGION 2, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

Petitioner-Appellant,

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 501, AFL-CIO,

V.

Respondent-Appellee.



On Appeal from an Order of the United States District Court for the District of Connecticut

APPENDIX

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Washington, D. C. 20570

PAGINATION AS IN ORIGINAL COPY

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APPENDIX

SIDNEY DANIELSON, REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD REGION 2, FOR AND ON BEHALF OF THE NATIONAL LABOR RELATIONS BOARD,

Petitioner-Appellant,

v.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 501, AFL-CIO,

Respondent-Appellee.

Civil No. No. N-74-89

RELEVANT DOCKET ENTRIES

- 4.19.74 Petition for Temporary Injunction.
- 4.19.74 Order to Show Cause.
- 4.25.74 Answer of Respondent.
- 5.21.74 Opinion and Order of Judge John O. Newman Dismissing Petition.
- 5.22.74 Judgment of Dismissal
- 6.26.74 Notice of Appeal.

PETITION FOR INJUNCTION UNDER SECTION 10(1) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

To the Honorable, the Judges of the United States District Court for the District of Connecticut:

Comes now Sidney Danielson, Regional Director of the National Labor Relations Board (herein called the Board), Region 2, and petitions this Court for and on behalf of the Board, pursuant to Section 10(1) of the National Labor Relations Act, as amended (61 Stat. 149; 73 Stat. 544; 20 U.S.C. Sec. 160(1); herein called the Act), for appropriate injunctive relief pending the final disposition of the matters involved herein pending before the Board on charges alleging that respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(b)(4)(ii)(B) of the Act. In support thereof, petitioner respectfully shows as follows:

- 1. Petitioner is Regional Director, Region 2, of the Board, an agency of the United States, and files this petition for and on behalf of the Board.
- 2. Jurisdiction of this Court is invoked pursuant to Section 10(1) of the Act.
- 3. (a) On April 10, 1974, the Associated General Contractors of Connecticut Inc., herein called the Association, on behalf of the Atlas Construction Company, herein called Atlas, filed a charge with the Board in Case No. 2-CC-1316 alleging that International Brotherhood of Electrical Workers, Local 501, AFL-CIO, herein called Local 501, has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act. A copy of said charge is attached hereto as Exhibit 1, and made a part hereof.
- 3. (b) On April 15, 1974, the Association on behalf of Atlas filed a charge with the Board in Case No. 2-CC-1317 alleging that Local

501 has engaged in, and is engaging in unfair labor practices within the meaning of Section 8(b)(4)(ii)(B) of the Act. A copy of said charge is attached hereto as Exhibit 2 and made a part hereof.

- 4. The aforesaid charges were referred to petitioner as Regional Director, Region 2 of the Board.
- 5. Upon the basis of the following, petitioner has reasonable cause to believe that said charges are true and that a complaint of the Board based on said charges should issue against respondent pursuant to Section 10(b) of the Act. More particularly, petitioner has reasonable cause to believe, and believes, that respondent is a labor organization within the meaning of Section 2(5), 8(b) and 10(1) of the Act, and that said respondent has engaged in, and is engaging in, acts and conduct in violation of Section 8(b)(4)(ii)(B) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, as follows:
- (a) Respondent, an unincorporated association, is an organization in which employees participate and which exists for the purpose, in whole or in part of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (b) Respondent has its office at 200 Bloomingdale Road, City of White Plains, State of New York, and at all times material herein has been engaged within this judicial district in transacting business and in promoting and protecting the interests of its employee members.
- (c) The Association is a multi-employer Association incorporated in the State of Connecticut, with offices located at 6 Lunar Drive, Woodbridge, Connecticut. It exists for the purpose, inter alia, of representing its employer-members in matters relating to collective bargaining with labor organizations.

- (d) Atlas, a member of the Association, is a Connecticut corporation with its offices and principal place of business located at 110 Lenox Avenue, Stamford, Connecticut 06906, and is engaged in the business of performing general and related contracting services in the building and construction industry. During the past year Atlas received gross revenues in excess of \$1,000,000 and performed services outside the State of Connecticut valued in excess of \$50,000.
- (e) Stamford Realty and Construction Company, herein called Stamford Realty, is a Connecticut corporation located in Stamford, Connecticut where it is engaged in the business of performing general contracting services in the building and construction industry.
- (f) Peter M. Santella Company Inc., herein called Santella, is a Connecticut corporation located in Stamford, Connecticut where it is engaged in the business of performing electrical contracting services. During the past year Santella derived income in excess of \$50,000 for services performed for Atlas.
- (g) Rice Electrical Contracting Company, herein called Rice, is a Connecticut corporation engaged in the business of performing electrical contracting services. During the past year Rice has derived income in excess of \$50,000 for services performed for Atlas.
- (h) Herloy Inc. is a Connecticut corporation located in Stamford, Connecticut where it is engaged in the business of performing general contracting services in the building and construction industry.
- (i) At all times material herein Stamford Realty has been engaged by Stamford Dressed Beef Company, herein called Stamford Beef, as general contractor in connection with the construction of a building in Stamford, Connecticut, herein called the Stamford Beef construction project.
- (j) At all times material herein Stamford Realty has contracted with Atlas to be the construction manager of the Stamford Beef construction project.

- (k) On or about January 29, 1974 Stamford Realty contracted with Santella to perform certain electrical contracting services at the aforesaid construction project exclusive of providing any standby electricians for temporary power.
- (1) At all times material herein the electricians employed by Santella were members of or represented by Local 501 and Santella has maintained in force and effect a collective bargaining agreement with Local 501 covering the said employees.
- (m) At all times material herein Herloy Inc. has been the general contractor for the construction of an office building in Stamford, Connecticut owned by Hilti Inc. and herein called the Hilti project.
- (n) At all times material herein Helroy Inc. has contracted with Atlas for the latter to be the construction manager for the Hilti project.
- (c) On or about October 2, 1973 Herloy Inc. contracted with Rice for the latter to perform certain electrical services exclusive of providing any standby electricians for temporary power at the Hilti project.
- (p) At all times material herein the electricians employed by Rice were members of or represented by Local 501 and Rice has maintained in force and effect a collective bargaining agreement with Local 501 covering the said employees.
- (q) On or about March 28, 1974, Local 501, by Fred Wright, its business manager and agent, informed a representative of Santella that said company was in violation of its agreement with Local 501 because Santella had not assigned or paid electricians to stand by on temporary electrical power at the Stamford Beef construction site.
- (r) On or about April 11, 1974, at a meeting at the Stamford Beef construction site, Local 501, by Edward Troy, its representative and agent, informed representatives of Santella and Atlas that

unless electricians represented by Local 501 were assigned to act as standbys for temporary power, the electricians employed by Santella would not perform any other work at the construction site.

- (s) On or about April 5, 1973 Local 501, by Edward Troy, informed a representative of Rice that Rice was in breach of its contract with Local 501 by virtue of the fact that electricians represented by Local 501 were not assigned to act as standbys for temporary power on the Hilti construction project. Troy further warned Rice that unless Rice assigned electricians represented by Local 501 to perform such work, Local 501 would "pull Rice's shop."
- (t) At all times material herein, Local 501 has not been engaged in any primary labor dispute with Santella or Rice.
- (u) As a result of the acts and conduct of Local 501 as described above in subparagraphs (q), (r) and (s), Santella and Rice have respectively refused to perform services at the two aforesaid construction projects.
- (v) By the acts and conduct set forth in subparagraphs (r) and(s) Local 501 has threatened, coerced and restrained Santella andRice.
- (w) An object of Local 501's acts and conduct set forth in subparagraphs (r) and (s) have been to force or require Santella to cease doing business with Stamford Realty and Atlas and to force or require Rice to cease doing business with Herloy Inc. and Atlas.
- 6. It may fairly be anticipated that, unless enjoined, respondent will continue to repeat the acts and conduct set forth in paragraph 5, subparagraphs (r) and (s) above, or similar or like acts and conduct in violation of Section 8(b)(4)(ii)(B) of the Act. It is therefore essential, appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 10(1) thereof, that, pending the final disposition of the matters involved

herein pending before the Board, respondent be enjoined and restrained from the commission of the acts and conduct above alleged, similar acts and conduct, or repetitions thereof.

No previous application has been made for the relief requested herein.

WHEREFORE petitioner prays:

1. That the Court issue an order directing respondent to appear before this Court, at a time and place to be fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining respondent, its officers, agents, representatives, servants, employees, attorneys, and all members and persons acting in concert or participation with it or them, pending the final disposition of the matters involved pending before the Board, from:

Engaging in, or in any manner or by any means inducing or encouraging any individual employed by Santella, Rice or any other person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, or in any manner or by any means, threatening, coercing or restraining Santella, Rice, or any other person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Santella to cease doing business with Stamford Realty, Atlas or any other person or to force or require Rice to cease doing business with Herloy Inc., Atlas or any other person.

- 2. That upon the return of said order to show cause, the Court issue an order enjoining and restraining respondent in the manner set forth above.
- That the Court grant such further and other relief as may be just and proper.

Dated at New York, New York this 18th day of April, 1974.

/s/ Sidney Danielson
Regional Director
National Labor Relations Board,
Region 2

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ANSWER

Respondent INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION NO. 501, AFL-CIO, by its attorneys, DELSON & GORDON, ESQS., as an answer to the Petition herein, respectfully alleges:

- 1. Denies the allegations set forth in paragraphs 5, 5(q), 5(r), 5(s), 5(t), 5(u), 5(v), 5(w) and 6 of the Petition.
- 2. States that it is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs 5(f) and 5(g) of the Petition, except admits that Peter M. Santella Company, Inc. is engaged in the business of performing electrical contracting services and that Rice Electrical Contracting Co. is in the business of performing electrical contracting services.

WHEREFORE, Respondent respectfully requests the Court to deny the Petition herein.

Dated: New York, N.Y. April 25, 1974.

Yours, etc.

DELSON & GORDON

By /s/ Ralph P. Katz
a member of the Firm
Attorneys for Respondent
230 Park Avenue
New York, N.Y. 10017

[EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

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MR. GREEN: * * * We do want to stipulate, incidentally, to the introduction of the contract between Local 501 and Rice Electrical and Santella, Peter Santella Company, and stipulate

there is such a contract, and Mr. Katz does have the contract which should be marked in evidence.

MR. KATZ: Your Honor, this would be the first exhibit. I don't know if you want to number it 1 or A for the respondent. It consists of a printed booklet, plus some amendments thereto. The printed booklet expires as of May 31, 1973. These amendments continue, the printed booklet, except as they are changed by the amendments.

If your Honor is so disposed, we might label the booklet 1-A, the amendment thereto 1-B, and I have a letter of assent, which indicates the binding nature of this collective bargaining agreement on Peter M. Santella Company, Inc., the electrical subcontractor on one of the job sites here, and the other on Rice Electric Contracting Co., the other electrical contractor on the job site; and if the Court pleases, we could number them 1-C and D in that order.

I have the originals here. If I may, I would like to substitute Xerox copies for the letters of assent.

THE COURT: All right. 1-A, 1-B, 1-C and 1-D are full exhibits without objection.

(Respondent's Exhibits 1-A, 1-B, 1-C and 1-D were received in evidence.)

MR. GREEN: Counsel for respondent and myself also agree to stipulate that Local 501 has no contracts, no collective bargaining with Atlas Construction Company; Herloy, Inc., or Stamford Realty and Construction Company.

MR. KATZ: We so stipulate, your Honor.

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JOSEPH GAMBINO

called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name and address.

THE WITNESS: Joseph Leonard Gambino; 370 Scoffeldtown Road, Stamford, Connecticut.

DIRECT EXAMINATION

- Q. (By Mr. Green) By whom are you employed, Mr. Gambino?

 A. The Atlas Construction Company.
- Q. In what capacity are you so employed? A. I'm president.
 - Q. In what state is Atlas, Incorporated? A. Connecticut.
 - Q. Where is its principal place of business and office?
- A. 110 Lennox Avenue, Stamford, Connecticut.
- Q. I would like you to describe in general terms, rather briefly, the nature of Atlas' business? A. The Atlas Construction Company is a general construction firm that has as its business the construction of principally buildings.
- Q. During the past year, what was Atlas' gross revenues?A. Four million dollars, plus or minus.
 - Q. Plus or minus what? A. A couple hundred thousand.
- Q. Did Atlas perform any services outside the State of Connecticut? A. Yes.

- Q. Where? A. State of Vermont.
- Q. How much money did Atlas derive during the last year for performance of services in Vermont? A. The total amount, the value of the work was \$500,000.
- Q. With respect to the Stamford Dress Beef construction project, I would like you to describe Atlas' role, what its function is with respect to that project? A. By the contract, the Atlas Construction Company is employed as the construction manager. The construction manager is responsible for completion of the project. Practically speaking, we act as a general contractor. We employ specialty trades on the job, carpenters, laborers, masons, operating engineers. We also arrange for the subletting of contracts which are entered into between the subcontractor and the owner. We have --
- Q. I show you what is marked as Petitioner's Exhibit A for Identification and ask you if you can identify that document?

 A. Yes, this is the contract between the Atlas Construction Company and Stamford Realty and Contruction Company, operating as the owner's vehicle for legal business purposes.

MR. GREEN: would like to offer this as Petitioner's Exhibit A.

THE COURT: Is there any objection?

MR. KATZ: I have not had an opportunity to look at it, so I don't want to take the time now. I have no objections at this time. May I have an opportunity, however, to look at it later, because I don't want to interrupt at this point?

THE COURT: I will be a full exhibit with that understanding. (Petitioner's Exhibit A was received in evidence.)

MR. KATZ: If there are any parts of the contract in which the general counsel intends to rely, it might be helpful if he points those out and I can put my attention to those.

MR. GREEN: The document is offered to show that Atlas Construction Company has a contract to perform certain services at the site. There is no particular part of it that we are relying on except for the fact that they are there and they are doing work pursuant to a contract.

- Q. Mr. Gambino, I would like you to describe what the Stamford Dressed Beef is, what kind of a company is that?
- A. Stamford Dressed Beef is a company which processes meats and poultries. They have a processing and -- what they call a fabrication section, and they have a freezer plant. They take in this meat, they treat it, freeze it, and they sell it to retail establishments.
- Q. Where is this construction taking place? A. On the corner of Canal and Henry Street in Stamford.
- Q. When did work begin at this site? A. Work began in April of 1973.
- Q. When is work scheduled for completion at the site?A. September 6, 1974.
- Q. Is there any particular reason why it's scheduled for completion September 6, 1974? A. Yes. Stamford Dressed Beef has its present location within an urban renewal area. They have been ordered by the court to vacate that location because of its interference with the urban renewal project, and the court has ordered that they leave that site and enter the new building by September 6, 1974.
- Q. Has any company been retained to perform electrical contracting services at the Stamford Dressed Beef site? A. Yes.
- Q. Would you name the Company that's been retained for that purpose? A. Peter M. Santella, Incorporated.
- Q. Who retained him, who was responsible for retaining Peter Santella Company? A. The Atlas Construction Company.

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- Q. I show you what has been marked as Petitioner's Exhibit B for Identification and ask you if you can identify this document? A. Yes. This is the contract that I drew for the electrical work.
- Q. When you say "I drew", are you talking about you personally, or somebody else within the Atlas Company? A. No, I did it personally.
- Q. You are familiar with the terms of this agreement?

 A. Yes.

MR. GREEN: I offer Petitioner's Exhibit B in evidence, and specific reference to be made to Page 2(a) where it says: "Work shall not include -- shall be involved" --

MR. KATZ: I would like to voir dire, your Honor.

THE COURT: All right.

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VOIR DIRE

- Q. (By Mr. Katz) Mr. Gambino, this contract appears to be between Stamford Realty and Construction Company and Peter M. Santella Company, is that correct? A. Yes.
- Q. Atlas, your company, is not a party to this agreement, is it? A. That's correct.
- Q. Did you negotiate directly with Peter M. Santella Company? A. Yes.
 - Q. In connection with this contract? A. Yes.
- Q. So that Peter M. Santella Company was dealing with you, is that so? A. For the purposes of that contract development and solicitation of price and agreement on the final contract sum, yes.
- Q. Were you representing Stamford Realty and Construction Company? A. Yes, we were their agent.

MR. KATZ: I have no objection, your Honor.

THE COURT: I will be a full exhibit.

(Petitioner's Exhibit B was received in evidence.)

- Q. (By Mr. Green) Mr. Gambino, I would like you to tell us what arrangement, if any, was made in the contract between Santella and Stamford with respect to operating temporary power?
- A. The contract was written with the intent to exclude from the requirements of the --

MR. KATZ: I'm going to object. The contract is in evidence and speaks for itself.

THE COURT: Well, I don't understand that he is offering any evidence to alter the terms of it.

MR. GREEN: I'm talking about how it got to be that way.

MR. KATZ: It seems to me, your Honor, the contract does speak for itself.

THE COURT: That may be, but he is not trying to change its terms, as I understand it. He wants me to understand how this contract came to be, just as a matter of historical events, not for purposes of changing the terms.

MR. KATZ: I will withdraw that objection.

- Q. Would you please describe how this contract came about with respect to -- at least with respect to the terms relating to the operating temporary power? What happened? A. Based on our best business judgment --
- Q. You say "our" -- A. My best business judgment -- I wrote into the contract language which removed from Peter M. Santella, Incorporated responsibility the operation, maintenance and

installation of temporary power facilities. In the event we elected to have that work performed by his firm, we could authorize it and would pay him extra for it. That was the intent of the contract in that area.

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Q I would like you to describe briefly what we are talking about, what is temporary power and what is operating temporary power mean? A. Temporary electric power is something that's required on all jobs today because of the power tools and other facilities that run off electricity. Temporary power is also provided to give light in sections of the building that would normally not have any natural light. The power is installed in the very beginning of the job, that's probably the very first thing that's done, after we move our trailers onto the site.

In this particular instance, we authorized another electrical contractor to come in and install for us what we call a temporary service box, which consists of a switch box with circuit breakers in it, enclosed in a weather-tight wood framework to protect it from the weather, and it also has a meter in there so we can pay the power company for whatever electricity we used.

That facility is installed, it's inspected by the local building inspector. He agrees that it conforms to all the safety requirements, and then he authorized the power company to tap into that box so that we can have electricity.

- Q. After the box is installed at the site and the wires are put out to wherever they are going to, how -- what are we talking about in terms of operating the power, turning it on and off? Describe that. A. That operation consists of doing what you do in your own house, when you want to turn on the electricity. You walk over to the box and you push the circuit breaker switch one direction and the lights go on. At the end of the day, if you want to shut them off, you take the same switch and push it in the other direction and the lights go off.
- Q. When did Santella begin work at the Stamford Dressed Beef site? A. I believe Santella began in the early part of March of 1974.

- Q. When Santella began work, who, if anyone, had the responsibility of turning that circuit breaker on and off to turn the lights on in the morning and off at night? A. For the eleven months before and during the time he was on the job, that authority was given to our project superintendent, who would either turn the lights on and off himself or designate some other employee of our firm to do that.
- Q. Who was that? A. The beginning part of the job it was a fellow by the name of Duke, Walter Clark. Right now, it's a Mr. Joseph Constantino.
- Q. Who are those people employed by? A. They are employed by the Atlas Construction Company.
- Q. Did there come a time when Santella ceased performing work at the site? A. Yes.
- Q. When was that? A. I believe the date is March 28, 1974.
- Q. Did you have contacts with Santella firm when they weren't doing -- after they stopped doing the work? A. After they stopped doing the work, yes.
- Q. I show you what is marked as Petitioner Exhibit C, and ask if you can identify this document? A. This is a telegram sent to Peter Santella by our superintendent, Mr. Constantino, at my direction.

MR. GREEN: I offer Petitioner's Exhibit C.

MR. KATZ: No objection.

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THE COURT: Full exhibit.

(Petitioner's Exhibit C was received in evidence.)

Q. Did you receive any response to that telegram by the Santella firm? A. Yes, I did.

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Q. I show you what is marked as Petition Exhibit D, and ask you if -- A. This is a letter from Mr. Peter Santella describing the circumstances as he saw them as to why he was not *on the job.

MR. GREEN: I offer Petition Exhibit D.

MR. KATZ: No objection.

THE COURT: Full exhibit.

(Petitioner's Exhibit D was received in evidence.)

- Q. Did there come a time after this exchange of telegrams when you attended a meeting at the job site? A. Yes.
 - Q. When was that? A. I believe that date was April 11.
- Q. Where did the meeting take place? A. That meeting took place at the job site at the job trailer.
- Q. Who was present at that meeting? A. I was, Mr. Constantino was on and off. He is our superintendent. Ed Troy, representing Local 501; Peter Santella, representing Peter M. Santella Company; and Jack Ruscoe, who was Mr. Santella's, or is, Mr. Santella's superintendent.
- Q. I would like you to describe what took place at that meeting by telling us who said what to whom. A. The conversation principally was between myself and Mr. Troy. After a little ban-

tering about, we got to the heart of the question. Mr. Troy advised me that Peter M. Santella Company was, in his opinion, in violation of its contract with Local 501. The contract, he stated, claimed that -- claimed the work of installing, operating and maintaining temporary power, and that Peter M. Santella agreed to award that work to members of Local 501.

I pointed out to Mr. Troy that it was our opinion that the job was best served by our not awarding that work to Peter M. Santella to perform, and it was not an obligation under his contract to do that work.

THE COURT: Just go back to the beginning of where he was recounting what Mr. Troy said.

(Answer read.)

THE COURT: Let me be sure I understand. Your account is that Troy told you that the Santella contract with Local 501 reserved the temporary power work for members of Local 501?

THE WITNESS: Yes.

Q. I would like you to go on with the conversation. A. The problem was discussed of the fact that I did not want to enter into any agreement of this nature with Peter M. Santella, that I wished to have the temporary power done by others.

I asked Mr. Troy what specifically it was he wanted, and he advised me that he wanted the electrician to come to the job in the morning and operate the switch, and at quitting time to shut it off. The electrician's quitting time is 3:30 in the afternoon. The other tradesmen on the job do not quit until 4:30. If I permitted -- if I gave the work to Mr. Santella, and then he in turn had the men turn off the lights at 3:30, for the next hour we would not be able to perform work on the job.

The practical solution to that would be to have an electrician on the job until 4:30. Since this is beyond the normal working hours for the electrician, then the electrician is paid, I believe it's double time, at least time and a half --

- Q. I take it you are giving us your analysis of the problem?A. No, this is what was discussed.
 - Q. All right. Keep on telling us what was discussed.
- A. This is discussed, maybe in not those exact words, but we stuck to the heart of the problem, which is who pays for this man to perform work after 3:30, so that he can be available at 4:30 to turn the lights off, and I asked Mr. Santella if he intended to pay for this,

the double time rate, and he told me no. I advised Mr. Troy that I was not going to have the owner pay any premium pay for a man to work an additional hour so he will be available at 4:30.

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Q. What did Troy respond? A. Mr. Troy responded and he said, "This is a matter between you businessmen, and certainly you can find a way to make an adjustment to this problem," which the meaning to that, to me, is somebody pays the bill and it's not them.

We got down to the subject, as I said, I asked Mr. Troy specific question, I said, "You claim to perform all the temporary wiring, maintenance and operation." I said, "What should happen in the event the owner should wish to award that work to someone else," for instance, if he had a specialty contractor come to the job and work on the refrigeration plant, which is very apt to happen on this job, and that this electrician working for the specialty contractor elected to run some temporary lights of his own, for his own use, what would be his position, Mr. Troy's position?

Mr. Troy said that that would be another violation, and as far as he was concerned, Local 501 had jurisdiction over all the temporary power work on the job and that they would have to resort to similar tactics than the ones they are resorting to today.

- Q. Did Mr. Troy indicate -- not indicate, but did Mr. Troy say what, if anything, might occur if this problem was not resolved in 501's favor? A. Mr. Troy told me that the men of Local 501 would not return to the job until such time as Local 501 members were permitted to operate the switch.
- Q. Was Santella as of April 11 performing any services at that site? A. No.
- Q. Had he performed any services at that site since March 28th? A. Since March 28th?

- Q. To that meeting. A. No, to that meeting, no.
- Q. Did anybody offer any kind of suggestions to resolve this problem? A. Yes. Mr. Santella suggested that we let the status quo remain: that is, Atlas personnel to operate the switch, so since we all knew this was going to be a National Labor Relations Board matter, that we let the status quo remain until such time as the Court or someone else resolved the question as to whether the union had the right to stop work because of their lack of authority over the switch.

In the event we -- I say "I", the contractor and the owner -- were found to be operating improperly, and that the union was correct, then we would pay back wages to somebody for the lost man-hours.

Q. What did Mr. Troy respond to that? A. Mr. Troy indicated that he did not think that was legal, to pay a man for not performing any work, and I advised him in the past when we had similar problems, that contractors had, in lieu of paying a man, make donations to either the welfare funds or the pension fund, or one of the other trustee type funds that the union handles for the man, and in that way, at least, the membership would get the benefit.

- Q. What did he say to that? A. Mr. Troy thought that the suggestion by Peter Santella was worth considering, and he suggested that they both drive down to the local headquarters in White Plains and discuss it with Ed Troy's superiors.
- Q. Did you receive any call later on that day? A. Yes. I received a call from Peter Santella advising me that the suggestion he made was not acceptable to, I believe it's Mr. Wright.
- Q. Who is Mr. Wright? A. Mr. Wright is the business manager for Local 501 -- and that Mr. Wright had an alternate suggestion, as related to me by Pete Santella.

Q. What was that? A. That alternate suggestion was that we put the Local 501 man in charge of that switch and permit him to operate it until such time as the courts resolved the matter,

and I asked Pete, "Does that mean we have to pay the man the double time?" Which Pete replied, "Yes."

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And I said, "What if the court finds the union to be wrong, do we get our money back?"

Which Pete laughed, and I knew the answer to that myself, I shouldn't have asked the question. I said that I did not think that was an acceptable suggestion to me.

THE COURT: Did your offer include paying straight time, or something in addition?

THE WITNESS: I didn't offer anything, your Honor. Peter Santella made the suggestion. The union felt it was something worth considering, and they came back and suggested something different than Pete suggested.

THE COURT: The Santella offer, did that -- as far as you know -- did they say whether this was to pay straight time or more?

THE WITNESS: No discussion was had about paying straight time, double or anything. The context of the conversation was that the union members would be paid the premium time rate that they are paid under the contract. That's always been the problem.

- Q. I would like you to turn your attention to the Hilti project.
 First of all, I would like you to describe this project in terms of the principals, who is involved there?
 A. You want me to describe them?
- Q. Yes. A. The Hilti project is an office building about 60,000 square feet. We are the construction managers on the project. The owners of this project are a syndicate. This syndicate is divided up into a financial group and construction group.

The construction group has the responsibility to see that the building is constructed. The name of that group is Herloy, Incorporated, named after the two principals in that group, Mr. Herb Meyers, that's the Herb part, and Mr. Floyd Fowler, so out of that they made that company up to serve as the vehicle of transacting business between the syndicate and us, who, in effect, are the general contractors in reality, not by name.

- Q. Does Atlas have a contract with respect to this job?

 A. Yes. We are the so-called consultants for the firm Herloy,
 Incorporated. In effect, we are the general contractors, we employ
 tradesmen, the same way as we employ tradesmen for Stamford
 Dressed Beef. We solicit contract and perform all the functions of
 a general contractor.
- Q. I show you Exhibit E and ask you if you can identify that document? A. Yes. This is the contract between the parties.
- Q. Between what parties? A. Herloy, Incorporated and the Atlas Construction Company.

MR. GREEN: I offer Petitioner's Exhibit E in evidence.

MR. KATZ: Your Honor, again we are faced with an agreement of some length that we have not seen before. If there is any specific part that our direction should be drawn to, it might be helpful.

MR. GREEN: Again, it's in the nature of the same document that we presented for the Stamford Dressed Beef job, that is to say, that Atlas is working on this job pursuant to a contract, and this is the contract. There is nothing that's specific in the agreement that we are really pinning our hats on.

MR. KATZ: Again, your Honor, I'm not going to object at this time, but we would like to have an opportunity to at least see the document and maintain the right to object later if I see something in there.

THE COURT: All right. Full exhibit on that understanding. (Petitioner's Exhibit E was received in evidence.)

- Q. Now, incidentally, when did the construction begin at the Hilti job? A. April of '73.
- Q. When is that job scheduled for completion? A. Latter part of the July, 1974 or early August -- no specific date, but just within that two or three-week period.
- Q. Did there come a time when an electrical contractor was retained to perform services at the Hilti job? A. Yes. Rice Electrical Contracting Company was employed after we solicited prices and advised the owner that they were the low bidders.
- Q. From what you just said, I take it that Atlas had something to do with the retention of Rice? A. Yes. We solicited prices, we wrote the contract. I wrote the contract. I did write the contract personally.
- Q. I show you Petitioner's Exhibit F for Identification and ask if you can identify that document? A. This is a copy of the original contract that went to Chet Rice. It's an exact duplicate of the signed contract, although it's unsigned by the parties. This is the contract.

THE COURT: Between Rice and Herloy?

THE WITNESS: Yes.

MR. GREEN: With respect to this document, your Honor, which I am going to offer into evidence, Mr. Katz is reviewing the original, specific reference is made to Page 2(a), which is in reality, Page 3 of the exhibit.

THE COURT: What's 2(a)?

MR. GREEN; It's numbered Page 2(a), but it's really Page 3 of the exhibit.

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Q. Mr. Gambino, I would like you to describe how the contract was historically -- how this contract came about in terms of the function of temporary power, operating temporary power, with respect to that specific -- A. The circumstances are exactly the same as the circumstances in the Stamford Dressed Beef job. As a general construction firm, we feel that temporary power on a project, the control and maintenance and operation and everything else about it, should remain with us, because it's financially best interest of our clients.

We then award the work to whomever we want, and whatever work we wish to award.

- Q. How, in fact, did operate the switch, turn it on in the morning and turn it off in the evening? A. The superintendent on that job was my father, Mr. Carmen Gambino. He did, or he authorized one of our foremen or other people on the job to turn that switch on in the morning and shut it off at night for those months preceding the arrival of the electrical contractor on the job.
 - Q. Did he -- Mr. Gambino is employed by Atlas? A. Yes.
- Q. Did Mr. Gambino continue to do that for some time after Rice was supposed to go on the job? A. Yes.
- Q. When did Rice begin to perform work at the job?

 A. I'm not positive, but I believe he started work somewhere around February, maybe latter part of February. I can't recall the exact date, but he was in there in force in March.
 - Q. Did there come a time when he stopped work? A. Yes.
- Q. When was that? A. I believe the date is April 8. I think it was the week following work stoppage on the other job.
- Q. I show you what is marked as Petitioner's Exhibit G for Identification and ask you if you can identify this document?

 A. Yes, this is a letter sent to Helroy by Rice, with almost

precisely the same wording as the letter sent by Santella to us, on the other job, advising Herloy that --

MR. KATZ: Objection, your Honor. The document speaks for itself.

A. That's the letter I received. I received it from Herloy after Rice sent it to Herloy and Herloy sent it to me for action.

MR. GREEN: I offer Petitioner's Exhibit G.

MR. KATZ: No objection, your Honor.

THE COURT: Full exhibit.

(Petitioner's Exhibit G was received in evidence.)

Q. Did you take any action on the previous letter, and I show you Petitioner's Exhibit H for identification? A. Yes, this is the letter I sent in reply to that other letter advising Mr. Rice that I didn't think his actions were legal.

MR. GREEN: May I offer Petitioner's Exhibit H in evidence.

MR. KATZ: No objection.

THE COURT: Full exhibit.

(Petitioner's Exhibit H was received in evidence.)

- Q. Now, Mr. Gambino, I would like you to tell me, did there come a time when Rice did go back to that job site, the Hilti job site?

 A. Yes.
- Q. When was that, and I would like you to tell us the circumstances in which that occurred, insofar as you personally know?

 A. The owner advised me that --
- Q. When you say "the owner" -- A. The owner, Herloy, advised me they would like to see Local 501 work stoppage stop as

soon as possible, and they ask that circumstances be created which would possibly permit their coming back to the job. I had a meeting with Mr. Rice on April 11, and we explored at length the subject. Mr. Rice advised me that he felt he was in the middle.

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MR. KATZ: I'm going to object. I don't see how a conversation between these two parties is binding upon the respondent.

MR. GREEN: It's certainly not binding upon any particular action of the respondent. It just relates to the conversation -- the conversation he is talking about really relates to the control aspect of the relationship between Atlas and Herloy, how that changed.

THE COURT: It's not offered as anything binding upon your client.

MR. KATZ: The purpose of this conversation is to show how the relationship between Atlas and Herloy changed?

MR. GREEN: Yes.

MR. KATZ: I have no objection.

A. Herloy has asked me to -- Herloy asked Atlas, me, particularly, Mr. Fowler, the principal in Herloy, asked me, the president of Atlas, to please do what I could to restore the work force of the

electrical contractor on the job. On April 11, the same day as I had the meeting with Stamford Dressed -- at Stamford Dressed Beef with Ed Troy, Local 501, I had a meeting in my office with Mr. Rice. Mr. Rice pointed out to me this problem as he saw it. Mr. Rice advised me that he was in the middle and intended to either force me to do something, or the union to do something, but somebody was going to get him out of the box.

The box he was in was that he was not performing the work under the contract, and that we felt he was obligated to pay the damages, and on the other hand, he could not perform the work because he was -- to use his term, coerced by the union who threatened to remove his workmen from his electrical shop in total if Mr. Rice did not, in fact, remove the men from that job.

Q. Did Mr. Rice as you --

THE COURT: Unless what happened?

THE WITNESS: Unless the electrical members of 501 were permitted the right to operate that switch.

Q. Did he make --

MR. KATZ: I'm not --

MR. GREEN: I'm not offering it for the purpose of --

MR. KATZ: I'm going to ask that it be stricken because it seems to me wholly irrelevant for the purpose which it was announced in advance that this conversation was going to be admitted into evidence.

THE WITNESS: I didn't finish. I was going to come to that point.

MR. GREEN: I agree that certainly the statements by local -the alleged statements by Local 501 to Mr. Rice are hearsay, and
they are not -- should not be considered until or unless Mr. Rice
or somebody else can testify with respect to such statements, but
in terms of what I think Mr. Gambino is now going to get into, proposals and what happened later, it's relevant for that purpose and
only that purpose.

MR. KATZ: I have no objection to what the parties did, but it seems to me that this is simply inadmissible.

THE COURT: Are you going to have a witness --

MR. GREEN: Probably Rice.

THE COURT: -- who will report on what the representative of the union said to him --

MR. GREEN: Yes.

THE COURT: -- on this topic?

MR. GREEN: That's correct.

THE COURT: All right. So you are not claiming this witness'

account of what the union told Rice?

MR. GREEN: No. I can't.

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THE COURT: That may go out.

- A. May I recount what Rice told me?
- Q. I would like you to tell us what Rice suggested to resolve this problem. A. Rice felt -- Rice told me that he was going to send a letter to the union telling them that he was sending those men back to the job and that he was seeking permission from us to have these men operate this switch when they got to the job.

I told him that he could do that if he liked, and he could send the men to the job. I wanted to forewarn him that his men were not going to operate that switch when they got to the job because it was not in his contract, and we did not intend to give him the responsibility for this work.

- Q. Did there come a time when there was any change in that, what were the later developments? A. Yes. On the 18th of April --
- Q. (By Mr. Green) I would like to show you what is marked as Petitioner's Exhibit I for Identification, and I ask you if you can identify that? A. Yes. This is a letter that I sent to Rice Electrical Contracting Company outlining terms under which we would permit them to operate the switch.
- Q. Did Atlas, in fact, permit Rice to operate the switch under the conditions set forth in this letter? A. Yes, until today.

MR. GREEN: I offer Petitioner's Exhibit I in evidence.

MR. KATZ: I have no objection to the letter as being a letter which is sent, but I don't know if it's being offered for the truth of the contents referred to therein.

MR. GREEN; It's being offered to show that on or about April -- THE COURT: It's his letter, isn't it?

MR. KATZ: Yes, your Honor.

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THE COURT: Are you making objection to it?

MR. KATZ: I want to know the purpose of the offer. I'm not making objection at this time, no, your Honor.

THE COURT: It seems pretty clear he wants me to understand what ground rules the contractor set out to the sub.

MR. KATZ: If that's the purpose of the offer, I have no objection.

MR. GREEN: What can I tell you, that's exactly what I want to show, I want to show what historically has happened at this particular site, and this is the last particular event that occurred.

MR. KATZ: No objection.

THE COURT: Full exhibit.

(Petitioner's Exhibit I was received in evidence.)

A. Should I state what caused me to send that letter?

Q. We will get to that. I would like you to tell us whether or not you were told by anybody else to send or to make that arrangement with Rice before you sent that? A. Rice told me that he would hold the Atlas Construction Company for damages which he might incur, and he would hold Herloy responsible for damages if we prevented him from trying to set up circumstances which permitted him to work with Local 501, as he had agreed, and he said that on the preceding day that he would -- he intended to send an employee or employees to the job, and he was going to ask us to give him the right to operate that switch, and I said, "You may do that, and I will be at the job site myself to receive that."

So at 7:30 in the morning I went to the job and Mr. Kasiewicz of Rice Electrical Contracting Company, a member of Local 501, asked me for permission to operate that switch, and I told him that I did not think I could give him that permission, but I suggested that we

talk to his employer first. So we got on the phone and we called up Chet Rice, and I told Chet Rice that under the circumstances, it didn't seem advisable for me to give his employee the permission to operate that switch. I suggested he talk to his employee, and his employee and he had a discussion. I didn't hear Rice's end of it. I only heard Kasiewicz' end of it, and Kasiewicz said that he would have to call Local 501 if he was denied permission to operate the switch.

I then asked if I could speak to Rice, and I did, and I asked Mr. Rice if he had sent or he had authorized this man to go to work, in any event, or had he told the man to leave the job. He said no. He told me emphatically no. He told the man to go to work.

I then told Kasiewicz he could not operate the switch. Art asked if he could use the phone to call the local, and I said yes, and I courteously left the office. The phone call lasted a minute, and I came back into the trailer, and I asked him what he intended to do, did he intend to go to work or not, and he told me -- and his words were, "Bill said I can't work on this job."

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So I said, "We better call your boss." So I called Rice back again. Art Kasiewicz told Rice that he could not work on this job because Bill told him that he could not work on this job, and he said to his boss, "I'm going down to the GE job and going to work." And that ended the conversation and the electrician left the job.

Q. When was that? A. That was on the day preceding this letter. That afternoon the owner Herloy told me that he couldn't take much more of this, and to please grant them the permission to operate the switch, at least in the morning, and we then went home because on that job at 3:30 we were all quitting, so it didn't make much difference to us.

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So with that bit of coercion, put me on the spot, I told my father let them operate the switch, and the electrician the next day came and turned the switch on, went to work, and at 3:30 turned it off.

Q. Then you sent -- A. I advised Rice that I was doing this because of the circumstances.

MR. GREEN: I have no further questions of this witness, your Honor.

MR. KATZ: Under the Jencks rule, the Board has been giving counsel for the respondent an opportunity to look at statements made by its witnesses. Unfortunately, it has a rule that these statements could not be shown prior to the testimony. I made the request, but it could not be granted, and consequently, may I ask for a few minutes to look at these statements now?

THE COURT: All right. We will take a short recess. (Recess taken.)

CROSS EXAMINATION

- Q. (By Mr. Katz) Mr. Gambino, do you employ any electricians? A. No.
 - Q. When I say "you", I mean Atlas Construction. A. No.
 - Q. Does Atlas employ any members of Local 501? A. No.
- Q. You don't have any employees in your employ who are represented by Local 501, do you? A. No.
- Q. It's a correct statement, is it not, Mr. Gambino, that the reason that Local 501 did not want its employees to work on this job -- I'm talking about the Stamford Dressed Beef job now -- is because it would involve a violation of its collective bargaining agreement with Santella?

MR. GREEN: Your Honor, I'm going to object. It calls for a conclusion. It calls for a conclusion that Santella is in violation of his contract unless he is signed --

THE COURT: Are you asking him to give you Santella's reason?

MR. KATZ: No, I'm asking him to give me his understanding. THE COURT: Of what?

MR. KATZ: Of why Local 501 is part of a job on the Stamford Dressed Beef job site.

THE COURT: I don't know how he can tell you their reasons. He can tell you if they said anything to him, but he can't very well give you their reason.

- Q. Let me ask a prefatory question. Mr. Gambino, do you know the reason that Local 501 employees do not continue working on Stamford Dressed Beef job? A. I believe I know the reason, yes.
- Q. What is that reason? A. The reason is that they do not have access to the temporary power switch, and they claim the right to operate that switch.
- Q. On what basis did they claim that right? A. They say they have that right because of their collective bargaining agreement with Santella Electric.
- Q. Isn't that the same basis for Local 501's position at the Hilti job site? A. That's what I have been told by Mr. Troy.
- Q. That they believe that the work is theirs pursuant to their contract with Rice Electric at Hilti, and pursuant to their contract with Santella at the Stamford Dressed Beef site, isn't that so?
- A. I don't know what's that pursuant to.
 - Q. Well, in accordance with or under those contracts.
- A. Can you rephrase that?

- Q. Weren't you told by the Local 501 representative that he believed Santella to be in violation of his contract with Local 501 because Santella's employees were not doing all of the electrical work called for in that contract on the Stamford Dressed Beef site? A. Yes, that's what he said.
- Q. Isn't it your understanding that's the same reason that Local 501 is involved in this problem at the Hilti job site?

 A. No, that's the excuse for their not being involved.
- Q. Don't they make the same claim that Rice is in violation of his contract with Local 501? A. They have made that claim, yes.
- Q. Isn't that the only basis that they have given for their position with respect to both the Stamford Dressed Beef and the Hilti job sites? A. That's the only basis under which, they have pulled off the job, is that what you're saying?
- Q. The only reason that has ever been given to you by Local 501 for its position: that is, the position it's taking with respect to the employment of its men at Stamford Dressed Beef and Hilti, is that there is a violation of its contract with Santella and Rice, isn't that so? A. No.
 - Q. They have given you another reason? A. Yes.
- Q. What is that? A. They told me that I did not write a contract which granted that work to the electrical subcontractor, and they asked me to change that.
- Q. But weren't they saying, assuming they said that to you, that the reason they wanted that change, so that they could work in conformity with their agreement with Santella and Rice?
- A. Yes. their claimed agreement, I agree with that.
- Q. What's the value of the Stamford Dressed Beef job?

 A. \$1,600,000.

- Q. Will you give me an estimate of what the cost of having an electrician perform the work called for under the agreement between Santella and Local 501 at that job site would cost?
- A. The work that I assigned him under his contract?

 Q. No, the extra hour that you are talking about from 3:30 to 4:30 in the afternoon.

 A. That's only a portion of the extra. The amount of the extra would be indeterminate. It could go from \$5 to \$50,000, depending on the whim of the union deciding whether it wanted or did not want a man operating that switch when they felt like it. I can't tell that.
 - Q. You had a conversation with Mr. Troy, did you not?
 - A. Yes, I did.

- Q. During that entire conversation, weren't you talking about that one extra hour? A. Well, we did talk about that one extra hour, and we did talk about other things beyond the extra hour, yes, we did. We talked about the conventional circumstances of what happens when we work overtime on concrete finishing operation, which we go to midnight. We talked about the drawing down of the refrigeration plant and other circumstances, yes.
- Q. If you went to midnight on a particular job, who would authorize that? A. The owner usually authorizes it. It's circumstantial. If the concrete doesn't get hard by 4 o'clock, you wait until it gets hard and you work on it until it gets hard, and you keep the lights on so you can see what you're doing.
- Q. But it would not be Local 501 that would authorize concrete men to stay on the job or other trades, would it? A. No.
- Q. It wouldn't be the whim of 501 to determine how long other trades are on the job, would it? A. No.
- Q. The person who is operating the switch at the Hilti job site is your father, is he not? A. Generally speaking. I couldn't say for every day.

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- Q. Generally speaking? A. Generally speaking, he or --
- Q. Is he a licensed electrician by the State of Connecticut?

 A. No.
- Q. The gentlemen who you assigned to operate the power switch on the Stamford Dressed Beef job, were any of those licensed electricians?

 A. No.
- Q. Have you ever paid any money by way of trying to settle a matter to any Local 501 trust funds? A. No.
- Q. So that was an arragement that was never made with Local 501, was it? A. No, it was not.
- Q. Mr. Gambino, I am showing you Petitioner's Exhibit F. Will you describe that, please? A. Yes. That's the contract between Rice and Herloy.
- Q. Is that a full and complete copy of the contract? You spent some time looking at Page 2(a). Let me direct your attention to that page. Specifically -- A. It looks like the contract, yes, sir. I don't know of anything missing from it.
- Q. That's the agreement that was shown to and signed by Rice Electric, isn't that so? A. Yes.

MR. KATZ: Would you be good enough to mark that agreement? It should be Respondent's Exhibit 2 for Identification.

(Respondent's Exhibit 2 was marked for Identification.)

Q. Mr. Gambino, I am showing you Respondent's No. 2 for Identification. Would you identify that document? A. This document shows the difference, right. This is a document that was originally submitted and this is the document that was originally submitted and this is the document that was finally signed by the addition of Paragraph 3, that as a result of a discussion between myself and Chester Rice -- there is a difference between the two of them, by that one paragraph, Paragraph 3. This is the binding contract.

THE COURT: Which is F?

- Q. When you say "this is the binding contract", you are pointing to which document?

 A. I'm pointing to this one here.
- Q. That's now labeled Respondent's Exhibit No. 2 for Identification, isn't it? A. Right.

MR. KATZ: I would like to offer that into evidence.

MR. GREEN: I have no objection to the document. I wish we could make substitutes, arrangements to have substitutes made for that document, though.

MR. KATZ: I have no objection to having a substitute submitted if we can get a stipulation that the typewriter used for the addition is a different typewriter, not only in terms of size, appearance of the type, but also in terms of the color which may not show up on a substitute.

MR. GREEN: It looks like a different typewriter.

THE WITNESS: It is.

MR. GREEN: We will stipulate that it is.

THE COURT: 2 is a full exhibit with a copy to be substituted.

When you said moments ago that something was originally submitted, were you pointing to what was marked F --

(Respondent's Exhibit 2 was received in evidence.)

THE WITNESS: This one marked Petitioner's F.

THE COURT: That's the one that was --

THE WITNESS: Right, this is what went to Rice first, and then Rice and I had a discussion, and that is what was added per agreement between myself and Rice, and that evolved into that paragraph, which was added called No. 3.

Q. This paragraph is really the crux of the problem, is it not, Mr. Gambino? It reads: "3. And the electrical contractor Rice Electrical Contracting Company shall in no way be responsible for

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furnishing management, maintenance or control of temporary power unless a separate agreement satisfactory to both parties is entered into concerning temporary power"? A. Yes.

MR. KATZ: I have no further questions, your Honor.

REDIRECT EXAMINATION

Q. (By Mr. Green) Mr. Gambino, just for the record, would you please tell us what the charges would be for an electrician working overtime? A. I believe it's \$36 an hour, or very close to it. We have stipulated unit prices in Santella's contract, and I don't know whether the double time rate is shown in there or not, but usually it's very close to twice what the straight time is.

MR. GREEN: Nothing further.

MR. KATZ: No further questions.

THE COURT: Let me understand this notion of temporary power. Before you get to the switch, does somebody have to string any line or do any other steps to bring power to this site?

THE WITNESS: Your Honor, the power company has to go from their pole down into your switch box.

THE COURT: They do all that?

THE WITNESS: Right. We set the switch box up and they bring the power from the pole down to the switch box and then we authorize someone to do anything in addition to that, which is usually the stringing of temporary wires out into the job site.

THE COURT: Has that happened on these sites?

THE WITNESS: Yes. We have had that work performed.

THE COURT: Who does that?

THE WITNESS: Well, in the Herloy job, we elected to award that work to Rice. On the Stamford Dressed Beef job, we awarded it to Santella until such time as he left the job, and then we awarded

it to another contractor to do a day's work, if necessary, to keep the job moving. We have no objection to stringing of wires by members of Local 501.

THE COURT: Is the only work of installation, operation, maintenance of temporary power that has not been done by Santella

and Rice, in Santella's case, for the time he was on the job, is the only work that has not been done by them the operation of the circuit breaker switch?

THE WITNESS: Yes.

THE COURT: Anything else of this witness?

MR. GREEN: No, your Honor.

THE COURT: You may be excused.

(Witness excused.)

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JOSEPH PETER SANTONI

called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name and address.

THE WITNESS: Joseph Peter Santoni. 67 Hoyt Street, Darien, Connecticut.

DIRECT EXAMINATION

- Q. (By Mr. Green) Will you please tell us by whom you are employed? A. Rice Electric through 501.
 - Q. Are you here pursuant to a subpoena today? A. Yes.
- Q. Were you ever assigned to -- what's your job with Rice Electric? A. Shop general foreman.
- Q. Were you ever assigned to perform work at Hilti, the Hilti job? A. It's one of my jobs, yes.
- Q. What was your job supposed to be at the Hilti construction job, what was your responsibility? A. Supervision.

- Q. Did there come a time when Mr. Troy had a conversation with Mr. Rice in your presence regarding operation of a switch or temporary power? A. Yes, in my office.
- Q. When was that? Approximately when was that?

 A. Four or five weeks ago.

- Q. Where did that conversation take place? A. It was in my office of Rice Electrical Construction Company.
- Q. I would like you to tell us what Mr. Rice said to Mr. Troy and what Mr. Troy said to Mr. Rice at that time? A. I can't quote words, but the essence was that Mr. Rice was informed he was in violation of his agreements with Local 501 for the reason of not turning off and on a circuit breaker at a said job.
 - Q. This is Mr. Troy talking? A. Yes.
- Q. What else -- do you recall Mr. Troy saying anything else?

 A. Well, eventually, it came to discussion between Mr. Rice and

 Troy about a local agreement and what would happen if Mr. Rice was
 in violation or what could happen if he was in violation of a local agreement.
- Q. What did Mr. Troy say? A. The answer was: "If you are in violation of a local agreement, we may be -- we may remove the 501 employees from your employ."
 - Q. Who said that? A. Mr. Troy.
- Q. I would like you to tell us -- did anything happen after that, were you given any instruction after that conversation by Mr. Rice?

 A. Mr. Rice told me to have my electrician, Artie Kasiewicz, Artie Cash, they call him -- my electrical foreman on the job, to ask Mr. Carmen Gamgino if he could operate that circuit breaker, and if he said no, I would find work for him elsewhere.
- Q. What happened? A. He said no and I found work for him on another of our jobs.

- Q. You took him from the Hilti job and put him on another job? A. Yes. And I got this instruction from Mr. Rice.
- Q. Where does Rice Electrical Contracting have its main office, where is its main office? A. 222 Summer Street.
- Q. Do you know in what state it is incorporated? A. I think he is incorporated.
 - Q. Do you know in what state? A. No.MR. GREEN: I have no further questions of this witness.

CROSS EXAMINATION

- Q. (By Mr. Katz) Mr. Sanchioni, the conversation you testified to between Mr. Rice and Mr. Troy, isn't it so that in that conversation Mr. Troy said to Mr. Rice that you are in violation of your agreement with Local 501?

 A. Yes. Did I say that before?
- Q. Yes, but another point -- you did say that and I wanted to make sure that was your testimony. How long have you worked for Rice Construction -- is it Rice Electric? A. Since 1948, and with the union since 1953. I'm a 501 member.
- Q. Since 1948 was Rice Electric a party to a collective bargaining agreement during this entire period of time with Local 501?

 A. He went union approximately -- I would guess about 1950 he went union, because I left his shop.
- Q. Since the time that Rice Electric was party to a collective bargaining agreement with Local No. 501, do you know of any job other than Hilti construction job where Local No. 501 electricians working for Rice Electric did not have included in their work the operation of this power switch?

 A. Possibly -- there was trouble at the incinerator along this line. Again, Mr. Gampino knows more

than I do, but -- whether it was included or not, I don't know. I don't make up contracts, but there has been no problems.

- Q. To your knowledge, was there any job that Rice Electric had after it was a collective bargaining signatory with 501 where its electricians did not have included in their work the operation of this temporary power switch? A. The smaller jobs would include an allowance, the larger jobs, great big ones, we were told as a rule, you ask the generals, that it would be T and M, or they pay on time, and so far, he has been, I assume, getting his temporary light paid for in that respect.
- Q. Any job you know of, haven't the Local No. 501 electricians done this work? A. Yes.
 - Q. Did you know Thomas Janski, Junior? A. Yes.
- Q. Do you know the circumstances of his death? A. You mean how it happened?
 - Q. Yes. A. No.

MR. KATZ: I have no further questions.

THE COURT: You said on the jobs the work by 501 did include working the switch?

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THE WITNESS: Yes, in the past, we have maintained temporary power.

THE COURT: Including operating the switch?

THE WITNESS: Yes.

THE COURT: That's been the general pattern?

THE WITNESS: With my shop, yes.

MR. KATZ: I have no further questions.

THE COURT: Anything else?

REDIRECT EXAMINATION

Q. (By Mr. Green) Did Rice work on the Stamford incinerator?

A. Yes, I just mentioned that. There was a difficulty on temporary power on that job.

Q. Did Rice employees work that switch on the incinerator job, do you recall? A. Part-time, yes; part-time, no.

Q. Some of the time they did, and some of the time they didn't? A. Yes.

MR. GREEN: I have no further questions.

RECROSS EXAMINATION

Q. (By Mr. Katz) Isn't it correct that on that job, part of the time was there is -- there was an attempt to have 501 men perform that work -- A. Your answer is yes --

THE COURT: Your answer is yes?

THE WITNESS: Yes.

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MR. KATZ: No further questions.

(Witness excused.)

PETER M. SANTELLA

called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name and address.

THE WITNESS: Peter M. Santella. 76 Nubel Lane, New Canaan, Connecticut.

DIRECT EXAMINATION

- Q. (By Mr. Green) Mr. Santella, by whom are you employed?

 A. Peter M. Santella Company.
 - Q. What's your job? A. President.
- Q. Where is your company incorporated? A. In Connecticut.
 - Q. Where is it located? A. New Canaan, Connecticut.
- Q. Please describe the nature of your business? A. We are in the electrical subcontracting business.

- Q. During the past year, what has been Santella's gross revenues? A. Approximately a million, a million three, a million four.
- Q. Apart from the Stamford Dressed Beef job, did you perform any services for Atlas during the past year? A. Yes, we have.

- Q. How much in dollar value? A. About \$250,000 worth.
- Q. I take it that Santella has a contract to perform electrical services at the Stamford Dressed Beef construction site, is that correct? A. Yes.
- Q. When did your company start performing work at that site? A. In February we started on a time and material basis before we received the contract.
- Q. Incidentally, are you here pursuant to a subpoena?

 A. Yes, I am.
- Q. Did there come a time when you had a discussion with Fred Wright concerning turning on and off the switches at the Stamford Dressed Beef site? A. Yes.
- Q. When was that? A. If I'm not mistaken, April 27 I had the -- no, April 27 I had -- I was notified by my foreman that evening that the men were going to be withdrawn from the job. I spoke to Mr. Fred Wright on the 28th of April.
- Q. How did you talk to him? Did you talk to him personally or did you talk to him on the phone? A. I talked to him on the phone.
- Q. I would like you to tell me as best you remember what he said to you and what you said to him during that phone conversation? A. To the best of my recollection, I talked to him and he said he had spoken to Eddie Troy and said that we were not living up to our agreement.

- Q. Did he specify how you were not living up to your agreement? A. It's the clause where the local member -- member of the Local 501 has to maintain and operate the temporary services.
- Q. Do you know who was actually doing that work of turning on and off the switches for temporary power at the time you started performing work at that site? A. No, I don't.
- Q. Were any of your employees doing that? A. No. We were not on that job constantly, so we couldn't.

MR. KATZ: I'm having great difficulty hearing the witness.

- Q. After you spoke to Mr. Wright on April 28 -- incidentally, did your men go to work on April 28 before you talked to Mr. Wright?

 A. No, they were withdrawn on the 27th.
- Q. After you spoke to Mr. Wright on the 28th, what happened then, what did you do, if anything? A. I received a telegram.
- Q. From whom? A. From Atlas Construction on -- I think it's April 1st.
- Q. I show you what is Petitioner's Exhibit C and ask you if that's the telegram you received? A. Yes, sir.
- Q. After you received this telegram, did you do anything about it, did you call anybody? A. I called -- I got this telegram, I think on April 1st, and late in the afternoon I called Bill Drinkwater down at Local 501 and he referred me -- I told him the problem and he said, "I think your best thing for you to do is talk to our lawyer," and that's when I talked to Mr. Katz.
- Q. Who is Bill Drinkwater? A. Bill Drinkwater is the assistant business manager at Local 501.
 - Q. Did you talk to Mr. Katz? A. Yes, I did.
- Q. I would like you to tell me what he said to you and what you said to him. A. I talked to Mr. -- I couldn't get ahold of

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Mr. Katz that evening. I got hold of him the next morning at his office. We -- I told him about the telegram, and I told him my problem. They wanted us to get back to the job, and he said that, send them the telegram back, stating that why we are not on the job, and that we will -- we were ready to meet and sit down and talk this over. And I think I added a couple of more sentences to my letter in return to Atlas Construction to cover myself.

- Q. I show you Petitioner's Exhibit D. Is that --
- A. This is the letter -- this is the letter that I made up, and the latter part of it is that the number five temporary power and number six standby electrician for temporary power which is in this contract, and I couldn't do this work until he signed the slip for it. If you notice the last sentence is there -- the sentence where we want to meet with him.
- Q. I take it that Mr. Katz indicated to you that you should say that you are ready to meet with the parties? A. Yes.
 - Q. Did there come a time when there was a meeting?
- A. Yes. There was. After the second telegram.
 - Q. You mean another telegram? A. Right.
- Q. When was the meeting, when did the meeting take place?

 A. If I recall right, it was April 11th.
- Q. Where did the meeting take place? A. It took place Stamford Dressed Beef construction trailer.
- Q. Who was there? A. Mr. Gambino Mr. Troy, Mr. Ruscoe and Mr. Constantino and myself,
- Q. I would like you to tell us what happened at this meeting by telling us who said what. This is, as best you remember it.

 A. Well, the conversation was that we were in violation of our contract with Local 501.

Q. Who said that? A. Mr. Ed Troy said we were in violation of our contract with Local 501. I kept on telling him we were in violation of a contract with Atlas Construction because of what he tells me. He kept on telling me -- I'm Mr. in between, and I would like the two of them to get it settled once and for all so we can get this thing going on the job.

He was going back and forth, back and forth, and I finally tried to conclude it by coming to some arrangement, paying retroactively anything to get back to work. The arrangement that I made was --

Q. This is a proposal that you suggested? A. This is a proposal that I suggested to the both of them, that it would be retro-

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active pay if the National Labor Relations Board made a decision in favor of whoever it was, and if the Local 501 lost, there would be no pay. If Joe Gambino lost, he would have to pay retroactively, and to a welfare fund or a charter, is the way I put it.

- Q. Did Mr. Troy say anything esle at this meeting that you recall?

 A. No, he told us we were in violation.
- Q. Did he say anytime during this meeting what would happen if you were to continue in violation of your contract with 501?

 A. We wouldn't have man on the job.
- Q. After this meeting, did you go with Mr. Troy anywhere else? A. Yes, we did. We went to Local 501's office in White Plains.
 - Q. Who did you speak to there? A. Mr. Fred Wright.
- Q. Who is Mr. Wright? A. Mr. Wright is the business manager of the local.
- Q. I would like you to tell me what happened at Mr. Wright's office?

 A. Well, we talked to Mr. Wright and Eddie and, I think,

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Bill Drinkwater, the three of us sat down and explained to him the whole situation, and we gave him my proposal of the retro-

active pay, and he said, "No, let's do it in reverse, put the men on the job and pay the men," and -- so, I said, "All right. Let me call Joe Gambino," and I called Joe Gambino and he said, "Is money going to be given back?" And I said, "No." The last thing on the telephone conversation he said to me is, "Don't forget you got to get the men back to the job because you're still under contract."

Q. This is Joe Gambino? A. Joe Gambino said that.

MR. KATZ: I'm sorry, your Honor, I just can't hear the witness.

THE COURT: The last part you missed.

THE WITNESS: What do you want me to repeat, Ralph?

MR. KATZ: The reporter can read back. I guess from the beginning, the conversation within Mr. Wright's office.

(Answer read.)

Q. Did Mr. Gambino say anything to you about Mr. Wright's proposal, whether it was a good proposal or bad? A. He didn't say whether it was a good proposal or bad. He said, "Is the man going to give the money back if the National Labor Relations Board went with him?"

Q. What did you say? A. I laughed.

Q. Then what did he say? A. That's when he reminded me to go -- that he had a contract -- I had a contract with him.

MR. GREEN: I have no further questions, your Honor.

MR. KATZ: This statement is 35 numbered paragraphs and it will take me perhaps five minutes. I will race through it.

THE COURT: All right. The testimony was quite limited. I'm not aware of anything that he said that's in dispute. Is there anything?

MR. KATZ: May I just ask a few questions?

CROSS EXAMINATION

- Q. (By Mr. Katz) Mr. Santella, you testified about a telephone conversation. I think you said it was in April 28th, toward the beginning, between you and Mr. Wright. That was March 28, was it not? A. I'm sorry, you're right.
- Q. You made that telephone conversation, did you not?

 A. I made the call, yes.

- Q. The telephone conversation thereafter between you and me, you initiated that conversation, did you not? A. I may have mentioned it, I don't recall.
- Q. You were the one who called? A. Called you, yes, sir.
- Q. You knew I was the attorney for Local 501, did you not?
 A. Yes.
- Q. At that time, did not I suggest that you actually put in the language of the collective bargaining agreement which Local 501 said was being violated in your response to Atlas? A. Yes, sir.
- Q. And wasn't my suggestion that the meeting be between Santella and Atlas to try to resolve the problem? A. No, sir.
- Q. What do you recall my suggesting to you with respect to the holding of a meeting? A. That all of us would be there. That Atlas Construction, myself and 501.
- Q. Isn't the language of your letter of April 3, 1974, to Atlas with respect to the meeting, the language which I suggested that you write? A. Yes.
- Q. Isn't that language, "We are ready to meet with you and resolve this problem"? A. We meaning three.

- Q. Any other place in that letter did you indicate that No.501 had said that they wanted to participate in a meeting?A. No, it doesn't say that.
- Q. How long have you had a collective bargaining agreement with Local 501? A. Approximately ten years.
 - Q. Are you familiar with that agreement? A. Yes, I am.
- Q. Are you not an officer of the electrical contractors association which is the negotiator of that agreement? A. Yes, sir.
- Q. In those ten years, when you were under collective bargaining agreement with Local 501, have you taken any jobs like this at which your employees did not operate the power switch box?

 A. No.
- Q. Was there a meeting held of the joint labor management committee called for, described in that collective bargaining agreement between Local 501 and the National Electrical Contractors Association, Westchester-Fairfield Chapter on April 23, 1974?

 A. Yes, sir.
 - Q. Was that a regular meeting? A. Yes, sir.
 - Q. Can you tell us who was present at that meeting?
 - A. On the contractor's side was Jim Cushnell, Jerry Valenti.
- Q. Mr. Cushnell is the president of the NECA chapter, is that correct? A. Yes, sir. Jerry Valenti is the governor, and Angella Raffa -- Angello Ferrari and myself for the contractors, and Russell Uher, Fred Wright.
- Q. A few other representatives there from Local 501, is that correct? A. Yes.
- Q. You were there in your capacity as vice president and member of the board of directors, is that correct? A. Vice president and member of the labor management committee.

- Q. Member of the labor management committee of the Westchester-Fairfield chapter of the National Electrical Contractors Association? A. Yes, sir.
- Q. Did the problem of Stamford Dressed Beef come up before that meeting? A. Yes, sir.
 - Q. Was it discussed? A. Yes, sir.
- Q. Was any ruling made by the members of this joint labor management committee with respect to that job? A. Yes, there was.
- Q. Can you tell us what the ruling was in regard to whether or not the contract was violated? And by "contract" I mean the collective bargaining agreement between the employers and Local 501, by the failure of your employees to do this work: that is, disputed work, on the dressed beef job site? A. They all concurred that I was in violation.

MR. KATZ: I have no further questions.

REDIRECT EXAMINATION

- Q. (By Mr. Green) Mr. Santella, you have worked at jobs -your company has worked on jobs when operating the switch has
 been done by one of your employees, is that right? A. On this
 job?
 - Q. On other jobs. A. Yes, sir.
- Q. When that man is assigned to do that in overtime, after 3:30, what do you pay him and what do you get from the contractor?

 A. What do I pay him?
- Q. What do you get from the contractor, from the general contractor, when he works overtime? A. I pay him \$36 an hour. I charge the contractor.
 - Q. That's what you charge the contractor? A. Right.

- Q. What do you pay the electrician? A. Double time.
- Q. What's that, how much dollars and cents? A. Nine dollars and -- about \$18 take-home.
 - Q. So the difference is a profit to your company?
- A. Right. Overhead --
- Q. So that any additional electrical work that your company gets ahold of from contractors means more profit for your company, is that not right? A. That's right.

MR. GREEN: I have no further questions.

THE COURT: What's the situation as far as electrical work at the site now?

THE WITNESS: Right now, we have to get back to it very quick because they are pouring concrete and it's going -- it's harming our job right now. It's costing me money not being there.

THE COURT: Your employees are not there now?

THE WITNESS: No. They just started there today.

THE COURT: Who just started there today?

THE WITNESS: My electricians.

THE COURT: They are there today?

THE WITNESS: Yes, they are.

THE COUFT: When was the last day before today that they worked there?

THE WITNESS: Almost two weeks ago.

THE COURT: Who is working the switch today?

THE WITNESS: No one, your Honor.

THE COURT: No one?

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THE WITNESS: They are going to work, and working from 8 o'clock in the morning until 4:30 in the afternoon.

THE COURT: There is no need for temporary power?

THE WITNESS: The temporary power is being operated by someone else.

THE COURT: That's what I mean. It's being operated by someone other than your employees?

THE WITNESS: Our man there was instructed to check the power, and that's it.

THE COURT: What's your understanding of who is supposed to show up tomorrow or -- are they going to work tomorrow?

THE WITNESS: No, sir.

THE COURT: Monday is the next working day?

THE WITNESS: Monday, they will go to -- they will report to the job from now on and will not touch the switch. They will be with the man who does and check it before anyone goes on the job, and be with the man when he shuts it off, when the last construction worker is off the job.

MR. KATZ: May I ask a few questions? I think it might bring this out a little more quickly?

THE COURT: All right.

RECROSS EXAMINATION

- Q. (By Mr. Katz) Mr. Santella, at the joint labor management meeting held on the evening of April 23, 1974, was there not as part of the finding of contract violation a plan worked out which would enable Local 501 employees to return to the job site?

 A. Yes, sir.
- Q. This was a particular plan, was it not, with respect to how the job would be operated? A. Yes, sir.
- Q. And these employees have returned to the job pursuant to that plan, isn't that correct? A. Yes, sir.
- Q. And that plan provides that the employees of Local 501 will remain on the job site at all times that employees of other trades are on the job site, is that correct? A. Yes, sir.

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- Q. That they will be present when temporary power is turned on and when it's turned off, is that correct? A. Yes, sir.
- Q. That they will check the circuits, the grounds and the other parts of the electrical system at both of those times?

 A. Yes, sir.
- Q. And that payment will be made by Peter M. Santella Company to its employees for this time that they are on the job site, as well as from the time up until 3:30 in the afternoon, is that not correct?

 A. I didn't understand the last part of it, 3:30 --
- Q. Your company will be paying for all of the time that Local 501 members, your employees, are working on the job? A. Yes, sir.
- Q. And that any employee of yours who is on the job shall be assigned work by you and for you at all times? A. Yes, sir.
- Q. Are you familiar with the power on this job, Mr. Santella? A. Yes, sir.
- Q. If -- are you knowledgeable about the circumstances of the death of the Rice Electric Company employee in Stamford, Connecticut? A. No.
 - Q. Is not the power on this job enough to kill a man?A. Yes, sir.

MR. KATZ: I have no further questions, your Honor.

REDIRECT EXAMINATION

- Q. (By Mr. Green) Mr. Santella, you have apparently gone back to the job under some sort of agreement with the union to keep a man at the job whenever there is anybody else on the job, is that right? A. Yes, sir.
 - Q. Who is going to pay him? A. I am.

- Q. Are you going to charge Mr. Gambino for that?

 A. No, sir.
- Q. This is all going to be out of your pocket? A. Yes, sir.
- Q. The switch box that was referred to, when you work at jobs where operating the switch is under your control, is that switch box locked? A. Yes, sir.
 - Q. And does somebody have a key? A. Yes, sir.
- Q. And then when somebody wants to turn off power, you open up the lock and you turn the switch from one position to another, is that right? A. Yes, sir.
- Q. Your contract with Atlas provides, does it not, that after 4:30, he can require you not to have any electricians on the job site? A. Yes, it does.
- Q. So you have now apparently agreed with the union that you could be there until 12:30 at night and Mr. Gambino can kick you off the job site, can't he? A. Yes, sir.

MR. GREEN: I have no further questions.

MR. KATZ: No further questions.

THE COURT: You are excused.

(Witness excused.)

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JOSEPH GAMBINO

having been previously duly sworn, resumed and testified further as follows:

FURTHER REDIRECT EXAMINATION

Q. (By Mr. Green) Mr. Gambino, I would like you to describe what happened this morning at the Hilti site? A. Mr.

Fowler, the employee of Herloy, this morning asked my father, the job superintendent, to have the power turned on at 7:30, and he asked that Mr. Gambino turn that power on, and at 7:30 this morning my father did turn the power on.

The union members arrived at 8 o'clock and found that power on, and as a result of a statement by Mr. Sanchioni to me -- I'm sorry, that's wrong. Mr. Rice called me today. Mr. Rice expressed dismay over the fact that his employees were upset by the fact that the power was already on when they got to the job. I advised Mr. Rice that at 3:30 they would not be granted permission to turn the power off.

As a matter of fact, it was agreed that Mr. Gambino, my father, would keep the power on beyond 3:30 and deny the employees of Rice the right to operate that power. I don't know what's going to happen after that.

MR. GREEN: I have no further questions.

THE COURT: The switch was turned on by your father at 7:30?

THE WITNESS: Yes, sir.

THE COURT: Then you started to say when the workers arrived at 8:00 something happened?

THE WITNESS: They went to work.

THE COURT: They went to work?

THE WITNESS: Yes, they went to operate the switch and found it was on and made statements which I didn't hear. It's hearsay, but my father told me they were upset over the fact that power was already on.

THE COURT: Now, then, how did the 3:30 episode come up?
THE WITNESS: Well, at 3:30, under that prior coercion, there
they -- I granted them permission to turn the switch off at 3:30, but
we decided today to withdraw that permission.

THE COURT: Your company did?

THE WITNESS: Yes. May I relate how Santella's workmen working overtime on the job affects our firm and the owner, may I relate that?

THE COURT: One thing at a time. What have you told Rice about who is going to work the switch on Monday?

THE WITNESS: I told him that -- I told him that permission was withdrawn until further notice, pending the outcome of today's hearing. Basically, words to that effect.

THE COURT: Pending the outcome of this?

THE WITNESS: Yes, pending the outcome of this hearing. I assume some things which may or may not take place.

THE COURT: Can you tell me how the outcome of this hearing affects this problem?

THE WITNESS: Your Honor, if we find that your ruling could cause or will cause damage to the owner, we will advise him not to grant the union permission to operate that switch and on the Stamford Dressed Beef job, the circumstarces, they have never operated that switch, but they are working overtime on the job without our permission and having the men paid for this overtime will, in fact, affect the cost to the owner, and I would take steps to prevent Mr. Santella from having to pay that overtime against his will.

The job will be affected. He is liable to lose money on the job, it's going to affect his entire attitude towards the work, and in addition to that, there are many, many extras on the job, and Mr. Santella has asked me that when I see these bills come in for extra work, but because of the circumstances he asked me to please look

the other way, which I advised him that I cannot look the other way. I have an obligation to the owner that the owner only pays for goods and services rendered under the contract and any extras we

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approve. That I will not look the other way because he has additional costs incurred against his will, and, therefore, on Monday or any time we work beyond our normal quitting time, and if an electrical union member is on that job, I'm going to be forced to have that man removed from the premises, and at that time I'm afraid the men will walk off the job again, and we will be back in court.

THE COURT: You are going to undertake to have electrical workers who are working overtime at the Stamford site removed?

THE WITNESS: If I think that it's possibly legal under my contract, I will do so, because I believe it will be detrimental to my client. I believe he is going to end up paying for part of that.

Your Honor, we have a refrigeration plant that has to be torn down. I don't know what the union's action will be at that time when temporary power will have to be maintained on a 24-hour a day basis.

THE COURT: This is if you check to see this won't breach your contract.

THE WITNESS: Yes.

THE COURT: And won't subject you to tort damages for interfering with Mr. Santella's contract?

THE WITNESS: Yes.

THE COURT: If you get good legal advice that you're in the clear on that, then you may take some action?

THE WITNESS: I believe my contract says specifically that no overtime can be worked by Mr. Santella unless he has my permission to do that work, and I'm not going to grant him permission to work on that job if, in fact, there is very little or no work to do, except to, so to speak, have electricians available to turn power off at some particular time in the night when we feel the job has got to be shut down.

The pressures on us will be fantastic to try to find out how his extras do or do not have in them money to cover these extra expenses he is incurring.

REDIRECT EXAMINATION CONTINUED

Q. (By Mr. Green) Did you ever give permission to Rice to turn off that power, or operate that power after 3:30? A. No.

Power has to be maintained at other times. We have not granted them permission for that.

MR. GREEN: I have no further questions.

MR. KATZ: May I ask a few?

THE COURT: Yes.

RECROSS EXAMINATION

- Q. (By Mr. Katz) Mr. Gambino, you knew prior to letting out the bids on either the Stamford Dressed bid job or the Hilti job that Local No. 501 took the position that any contractor under agreement with it would be in violation of its contract if its men did not get the work of operating the temporary power switch, did you not?

 A. No.
- Q. Were you not involved in cases before this Court last year where this exact issue arose? A. I was involved in a case where this issue did arise, but the union's position on that case was not the same as the union's position in this case.
- Q. The union position in that case was not that the contract was violated by the subcontractors? A. That was never stated like that to me or to anybody else that I can recall. The men walked off the job.
- Q. Didn't you sit in the chambers of Judge Zampano and work out an agreement to terminate that dispute? A. I did. Yes, we did.

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- Q. During the course of that agreement, didn't the attorney for the union state that the union's position was that the union -- that the kind of contract that you wanted the electrical contractor to engage in caused him to violate his agreement with Local 501?

 A. Mr. Katz, it's been a year ago and I can't recall the words of that attorney specifically. I do know the hearing was to get the job into a position where the union would go back to work, the union was not at work at that time, and an arrangement was made at the direction of the Judge to do certain things which apparently satisfied the union, and they returned to work, and they satisfied us.
- Q. And you have no recollection that the union took those positions in those cases just a year ago in this very court that its contract was being violated? A. I'm not talking about a final technical point here. You're saying did they talk about violation of their contract, and I can tell you honestly I don't recall that being the issue as stated by them. Their issue was that they had the right to operate that temporary switch, and if we denied them that right and -- therefore, they walked off the job. They didn't say that a

contract was being violated by the electrical subcontractor. They were saying Atlas Construction Company was denying them the right to operate the switch.

Now, that seems to me to be technically different than the issue in this hearing, which that is you're claiming --

- Q. You have no recollection that they said that the contract between them and their electrical contractors was being violated?
- A. I can honestly --

MR. GREEN: I will object.

- A. -- I can't recall that.
- Q. Did the agreement that Herloy reached through you with Rice Electric cost Herloy any money? A. To date? To this date?

- Q. To date. A. No.
- Q. Did the agreement which was -- A. Excuse me. I take that back. In terms of payments to Rice, no. No money was paid to Rice, but in terms of damages incurred possibly by Herloy, yes, and by us, yes. So there are costs incurred by both of the parties.
- Q. You involved yourself in an extra cost because you permitted Rice's men to operate the power switch? A. No. We involved ourselves --
- Q. The answer is no, isn't it? A. Repeat the question, because I don't understand it.
- Q. You didn't understand the question? A. I would appreciate your repeating the question.
 - Q. Did you understand it?

THE COURT: Don't argue with him.

- Q. The question was: did you incur any extra cost because you permitted Rice's employees to -- A. The answer to the question is no.
- Q. Did Mr. Santella tell you the arrangement which was directed to him by the joint labor management committee?

 A. I never -- the joint labor management committee said anything, no.
- Q. Did he tell you the arrangements pursuant to which his employees were going to go back to work on your dressed beef shop? A. He asked that his men be able to return to the job and operate the switch, which I pointed out to him all the --
- Q. Please answer the question. Did he tell you what the arrangement was, or didn't he? A. He didn't tell me there was an arrangement. The answer is no.

Q. Did he tell you on what basis he would be able to return to the job? A. Yes.

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- Q. Was the basis on which he would be able to return to the job -- result in his billing you for any more moneys? A. Directly as a bill for temporary power?
 - Q. Yes. A. No, he didn't say that would be the case -- MR. KATZ: I have no further questions.

THE COURT: You are excused.

(Witness excused.)

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ARTHUR KASIEWICZ

called as a witness, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name for the record.

THE WITNESS: Arthur Peter Kasiewicz.

DIRECT EXAMINATION

- Q. (By Mr. Katz) Mr. Kasiewicz, by whom are you employed?

 A. Rice Electric.
 - Q. Where are you working now? A. Hilti.
- Q. What is your position on the Hilti job site? A. Electrical foreman.
- Q. Were you present there on Friday, April 26, 1974? A. Yes.
- Q. What time did you arrive? A. A few minutes before 8 o'clock.
 - Q. That's in the morning? A. In the morning.
- Q. Was there any concrete truck on the Hilti job site when you arrived a few minutes before 8:00 a.m. on April 26? A. No

- Q. Was there any later time during that morning that you are sure there was no concrete truck on that job site? A. No later time?
- 110 Q. Yes. Was a concrete truck there at quarter after 8:00 in the morning on that day? A. Yes, he came, it was after 8:00, about a quarter after 8:00. I passed by about a quarter after 8:00 and there still wasn't any -- when I passed by quarter after 8:00, there still wasn't any concrete truck in the place where they were pouring.
 - Q. So it arrived sometime after a quarter after 8:00 in the morning on Friday? A. Yes.
 - Q. Do you know by what time it had left the job site?A. Before noon, or no later than 1 o'clock after lunch.
 - Q. Can you tell us what work is left, what concrete work is left on the Hilti job site? A. To my knowledge, it's outside stairs, sidewalks, front entrance landings, rear entrance landings.
 - Q. These outside stairs, is any artificial light needed to work outside? A. Not if it's light. After it gets dark, then --
 - Q. From 3:30 in the afternoon until 6:30, would any artificial light be needed? A. No.
 - Q. Is there any outside artificial light needed until, of course, after it gets dark on any landings that you said remains to be done?

 A. After it gets dark?
 - Q. Would any artificial light be needed for either of the landings, are they inside the structure or outside the structure?

 A. Outside.
 - Q. And the sidewalks you are talking about are outside sidewalks?

 A. Outside.
 - Q. How long have you been a member of Local 501?A. Since 1959.

Q. Have you ever worked on a Local 501 job where the operation of the power switch was done by any employee other than an employee represented by Local 501? A. None.

MR. KATZ: I have no further questions, your Honor.

CROSS EXAMINATION

- Q. (By Mr. Green) Mr. Kasiewicz, when did you start working at the Hilti job site? A. Roughly -- maybe about a month ago.
- Q. That was about April 20th? A. I couldn't give you a definite date. I would have to look it up to have a positive date.
- Q. Were you assigned to go to that job site before you actually started to do work -- A. I was told by my boss that I was going to do the job.
- Q. Did you go to the job site and do any work in early April, 1974?

MR. KATZ: I'm going to object. I don't see how this is proper cross examination. It has nothing to do -- it was only for a limited purpose and area in which this individual was examined.

THE COURT: What are you seeking to develop?

MR. GREEN: Well, I will forego that. I have no further questions.

THE COURT: Mr. Kasiewicz, you are excused.

Do you say your engloyer was Rice Electric?

THE WITNESS: Yes.

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(Witness excused.)

THE COURT: Any other testimony?

MR. KATZ: No, your Honor.

JOSEPH GAMBINO

having been previously duly sworn, resumed the stand and testified further as follows:

FURTHER REDIRECT EXAMINATION

- Q. (By Mr. Green) Apart from pouring concrete, would there be any other situations in which temporary power or light would be necessary? A. Yes.
- Q. Such as? A. We use the temporary light even to run our trailer heaters and lights in our trailers or construction trailer. We use temporary light to light up the stairwells, we use temporary light to provide electric power for hand tools and other things of that nature, so we have actually a need for temporary power from the moment the superintendent walks on the job.
 - Q. Until when? A. Until he goes home.
- Q. Do you know whether or not there is any work scheduled for overtime at the Hilti job site for the future? A. Right now for the next few days there is not, but towards the end of the job there may be necessity to work overtime in order to get finished on time, yes.
- Q. Would any of that work, overtime work later on, would any of that evertime work require any temporary power light?

 A. Yes.
- Q. Would you give me just some brief examples? A. Finishing up interior offices, painting. We may decide to work on a Saturday, we may decide to work on a holiday in which Local 501 employees are not normally on the site, and on those days we would consider that overtime work, and we would end up requiring temporary power.

PETITIONER'S EXHIBIT "B"

SUBCONTRACT

Standard Form of Agreement Between Contractor and Subcontractor

Use with the latest edition of the appropriate AIA Documents as follows:

A101, Owner-Contractor Agreement -- Stipulated Sum

A107, Owner-Contractor Agreement -- Short Form for Small Construction Contracts

A111, Owner-Contractor Agreement -- Cost plus Fee

A201, General Conditions of the Contract for Construction.

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES;
CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH
RESPECT TO ITS COMPLETION OR MODIFICATION

This document has been approved and endorsed by the American Subcontractors Association.

AGREEMENT

made this 29th day of January in the year Nineteen Hundred and Seventy-Four

BETWEEN the Contractor:

Stamford Realty & Construction

Company

P.O. Box 2099

Stamford, Connecticut 06906

and the Subcontractor:

Peter M. Santella Company

4 Cross Street

New Canaan, Connecticut

Project:

Stamford Dressed Beef

Owner:

Stamford Realty & Construction

Company P. O. Box 94

Stamford, Connecticut 06901

Architect:

Bertram Lee Whinston AIA

The Contractor and Subcontractor agree as set forth below.

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents for this Subcontract consist of this Agreement and any Exhibits attached hereto, the Agreement between the Owner and Contractor dated -----, the Conditions of the Contract between the Owner and Contractor (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda issued prior to execution of the Agreement between the Owner and Contractor, and all Modifications issued subsequent thereto.

All of the above documents are a part of this Subcontract and shall-be available for inspection by the Subcontractor upon his request.

The only Addenda and Modifications issued prior to the execution of this Subcontract and applicable to it are as follows:

ARTICLE 2

THE WORK

The Subcontractor shall furnish all necessary labor, materials, equipment, shop drawing, electrical specifications, and field supervision to completely install all electrical work as described herein, in accordance with the following plans and specifications:

8/13/73

R-1 - R-3

9/11/73

HVAC 1

9/11/73

HVAC 2

12/3/73	E-1
677 M 157361	E-2
"	E-3
•	E-4
" /	E-5
"//	E-6
9/11/73	RF-1

and the Refrigeration Equipment Specifications.

The cost of all work performed to date of a T & M basis is included in the new lump sum price.

Work specifically included, but not necessarily limited to shall be:

- 1. Installation and wiring of electric heaters.
- 2. Installation and wiring of the thermacouple "Temperature Control Panel."
 - 3. Refrigeration control wiring.
- 4. Electrical hook up of all refrigeration equipment not called for to be factory wired by refrigeration spec.
 - 5. Final hook up of all electrical refrigeration equipment. Work specifically not included shall be:
 - 1. Furnishing of electric heaters.
 - 2. Furnishing of the temperature control panel.
 - 3. Heat trace cable on defrost water drain lines.
- 4. Standard exception to excavation, backfilling, cutting, and patching, painting, and masonry and concrete work.
 - 5. Temporary wiring.
- 6. Standby electrician for temporary power. If electrical contractor elects to have an electrician on standby power, it shall be at no cost to the Owner. However, it shall be noted that the subcontractor shall provide the General Contractor with temporary wiring

on a T & M basis when required by the General Contractor as per the unit prices outlined in Article 4 of this contract.

(Insert above a precise description of the Work covered by this Subcontract and refer to numbers of Drawings and pages of Specifications including Addends and accepted Alternates.)

ARTICLE 3

TIME OF COMMENCEMENT AND COMPLETION

(Here insert the specific provisions that are applicable to this Subcontract including any information pertaining to notice to proceed or other method of notification for commencement of Work, starting and completion dates, or duration, and any provisions for liquidated damages relating to failure to complete on time.)

Work shall commence immediately, and proceed continuously at a rate in keeping with the General Contractor's Schedule, which becomes a part of this contract. This subcontractor will be obligated to complete the entire work when indicated on this schedule, except as may be amended by extensions of time granted by the General Contractor.

No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Paragraph 11.4.

ARTICLE 4

THE CONTRACT SUM

The Contractor shall pay the Subcontractor in current funds for the performance of the Work, subject to additions and deductions by Change Order, the total sum of

One Hundred and Forty Thousand (\$140,000.00) Dollars
Also the following unit prices shall be included for extra work:

Foreman

\$19.00/hour

Journeyman

\$16.50/hour

ARTICLE 5

PROGRESS PAYMENTS

The Contractor shall pay the Subcontractor monthly progress payments in accordance with Paragraphs 12.3 through 12.6 inclusive of this Subcontract.

(Here insert details on unit prices, payment procedures and date of monthly applications, or other procedure if on other than a monthly basis, consideration of materials and equipment safely and suitably stored at the site or other location agreed upon in writing, and any provisions for limiting or reducing the amount retained after the Work reaches a certain stage of completion which should be consistent with the Contract Documents.)

The subcontractor shall submit to the Contractor's office, on or before the 25th day of each month, requisition for payment, in duplicate, covering the value of the work completed to the satisfaction of the Owner during that month. If said requisitions are not delivered by the subcontractor as above noted, payment will be withheld for 30 days additional. The Contractor reserves the right to approve all payment requisitions as may be submitted by the subcontractor and to make such adjustment of said requisitions as may be required to make them properly reflect the true value of the work actually done by the subcontractor. Ten percent (10%) retainage to be withheld until completion of the project.

Applications for monthly progress payments shall be in writing and in accordance with Subparagraph 11.2.1, shall state the estimated percentage of the Work in this Subcontract that has been satisfactorily completed and shall be submitted to the Contractor on or before the day of each month.

ARTICLE 6

FINAL PAYMENT

Final payment shall be due when the Work described in this Subcontract is fully completed and performed in accordance with the Contract Documents and is satisfactory to the Architect. Such payment shall be in accordance with Article 5 and with Paragraphs 12.3 through 12.6 inclusive of this Contract.

Final payment shall be made 30 days after above.

Before issuance of the final payment the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied.

ARTICLE 7

PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS

(Here insert any requirement for the furnishing of bonds by the Subcontractor.)

None required.

TIME

a) If the subcontractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Contract, or any extension thereof, or fails to complete said work within such time, the General Contractor may by written notice to the subcontractor, terminate his right to proceed with the work under contract. In such event, the General Contractor may take over the work and prosecute the same to completion, by contract or otherwise, and the subcontractor shall be liable to the General Contractor for any excess cost occasioned the General Contractor thereby, and for any actual damages

occasioned by such delay. If the subcontractor's right to proceed is so terminated, the General Contractor may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor.

b) The right of the subcontractor to proceed shall not be terminated as provided in paragraph a) hereof, nor the subcontractor charged with damages because of any delays in the completion of the work due to acts of God, acts of the Government, acts of another subcontractor in performance of a contract, or fires at the site of the work, floods at the site of the work, strikes directly related to the subcontract work, and freight embargoes. Provided that the subcontractor within ten (10) days from the beginning of any such delay, unless the General Contractor shall grant a further period of time, shall notify the General Contractor in writing of the causes of delay. The General Contractor shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact thereon shall be conclusive on the parties hereto.

OVERTIME WORK

a) The subcontractor shall not be allowed to work at night or outside the regular working hours except in cases of emergency affecting public health and welfare, or unless written permission is granted by the General Contractor. If deemed necessary by the General Contractor, he shall provide proper supervision of all work performed outside the regular hours. If such work is being performed for the personal satisfaction of the subcontractor, and no request has been made by the General Contractor, the subcontractor shall bear cost of supervision.

ARTICLE 8

TEMPORARY FACILITIES AND SERVICES

Unless otherwise provided in this Subcontract, the Contractor shall furnish and make available at no cost to the Subcontractor the following temporary facilities and services:

CLEANUP

Refer to Article 11.6 for obligation related to cleanup.

ARTICLE 9

INSURANCE

Prior to starting work, the Subcontractor shall obtain the required insurance from a responsible insurer, and shall furnish satisfactory evidence to the Contractor that the Subcontractor has complied with the requirements of this Article 9. Similarly, the Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required by the Contract Documents.

The Contractor and Subcontractor waive all rights against each other and against the Owner Construction Manager and all other Subcontractors for damages caused by fire or other perils to the extent covered by property insurance provided under the General Conditions, except such rights as they may have to the proceeds of such insurance.

(Here insert any insurance requirements and Subcontractor's responsibility for obtaining, maintaining and paying for necessary insurance, not less than limits as may be specified in the Contract Documents, shown below, or required by law. If applicable, this shall include fire insurance and extended coverage, public liability, property damage, employer's liability, and workmen's compensation insurance for the Subcontractor and his employees. The insertion

should cover provisions for notice of cancellation, allocation of insurance proceeds, and other aspects of insurance.)

- a) The subcontractor shall maintain at his expense the following types of insurance, issued by companies acceptable to the Owner, at subcontractor's expense, unless this Contract is on a cost plus fee basis:
 - (i) Workmen's Compensation Insurance, including occupational diseases, providing for the payment of benefits required by the laws of the State of Connecticut covering the persons employed by the Contractor on work under this Contract. Employers' Liability Insurance with a minimum limit of \$500,000 is to be provided.
 - (ii) Comprehensive General Liability Insurance providing coverage on a personal injury basis with limits of at least:

Bodily Injury Liability: \$500,000 per person and \$500,000 per occurrence.

Property Damage Liability: \$100,000 per occurrence and \$300,00 aggregate.

Such coverage shall include protective liability (Independent Contractors Liability) contractual liability specifically covering Hold Harmless requirements and products liability (including completed operations). The products liability is to remain in full force and effect for a period of two (2) years following job completion. In the event the Contractor will be doing any excavating or grading work himself or through a subcontractor, coverage will also be specifically provided to include liability of the Contractor arising from explosion, collapse, and underground damage.

(iii) Comprehensive automobile liability insurance providing coverage with limits of at least: Bodily Injury Liability: \$500,000 per person and \$500,000 per occurrence.

Property Damage Liability: \$100,000 per occurrence.

- b) The General Contractor may revise the types and limits of insurance at any time during the period of the Contract at his expense.
- c) The subcontractor shall furnish the Owner with certificates issued by the insurance company or companies issuing insurance policies required by this Article. Such certificates shall be provided prior to the commencement of any operations by the subcontractor. Such certificates shall provide that written notice shall be given to the General Contractor in the manner to be stipulated by the General Contractor thirty days prior to the cancellation or modification of any such policy. All original insurance policies shall be made available for inspection by the General Contractor on request.

Hold Harmless

The subcontractor agrees to indemnify and hold harmless the Owner, General Contractor, and Construction Manager against any costs incurred by the Owner, General Contractor, and Construction Manager (including without limitation amounts paid pursuant to judgements or settlements and as counsel fees) in consequence of any claim by a third party against the Owner, General Contractor, and Construction Manager, including without limitation, any claim by an employee of the Owner, General Contractor, and Construction Manager, and any claim by a subcontractor or another Contractor, whether filed before or after final payment, based on actual or alleged damage to or destruction of property or injury to persons allegedly caused by the subcontractor or by their respective employees, in connection with the work.

ARTICLE 10

WORKING CONDITIONS

(Here insert any applicable arrangements concerning working conditions and labor matters for the Project.)

The subcontractor shall execute his work in full accordance with the Occupational Safety and Health Administration, and all other regulatory agencies having jurisdiction, either Federal, State, or Local.

ARTICLE 11

SUBCONTRACTOR'S RESPONSIBILITIES

- 11.1 The Subcontractor shall be bound to the Contractor by the terms of this Agreement and of the Contract Documents between the Owner and Contractor, and shall assume toward the Contractor all the obligations and responsibilities which the Contractor, by those Documents, assumes toward the Owner, and shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, by those Documents, has against the Owner, insofar as applicable to this Subcontract, provided that where any provision of the Contract Documents between the Owner and Contractor is inconsistent with any provision of this Agreement, this Agreement shall govern.
- 11.2 The Subcontractor shall submit to the Contractor applications for payment at such times as stipulated in Article 5 to enable the Contractor to apply for payment.
- 11.2.1 If payments are made on the valuation of Work done, the Subcontractor shall, before the first application, submit to the Contractor a schedule of values of the various parts of the Work aggregating the total sum of this Subcontract, made out in such

detail as the Subcontractor and Contractor may agree upon, or as required by the Owner, and supported by such evidence as to its correctness as the Contractor may direct. This schedule, when approved by the Contractor, shall be used as a basis for Applications for Payment, unless it be found to be in error. In applying for payment, the Subcontractor shall submit a statement based upon this schedule.

- 11.2.2 If payments are made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon in writing, such payments shall be in accordance with the terms and conditions of the Contract Documents.
- 11.3 The Subcontractor shall pay for all materials, equipment and labor used in, or in connection with, the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.
- 11.4 The Subcontractor shall make all claims promptly to the Contractor for additional work, extensions of time, and damage for delays or otherwise, in accordance with the Contract Documents.
- 11.5 In carrying out his Work the Subcontractor shall take necessary precautions to protect properly the finished work of other trades from damage caused by his operations.
- 11.6 The Subcontractor shall at all times keep the building and premises clean of debris arising out of the operations of this Subcontract. Unless otherwise provided, the Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors.

- 11.7 The Subcontractor shall take all reasonable safety precautions with respect to his Work, shall comply with all safety measures initiated by the Contractor and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Contract Documents. The Subcontractor shall report within three days to the Contractor any injury to any of the Subcontractor's employees at the site.
- 11.8 The Subcontractor shall not assign this Subcontract without the writter consent of the Contractor, nor subcontract the whole of this Subcontract without the written consent of the Contractor, nor further subcontract portions of this Subcontract without written notification to the Contractor when such notification is requested by the Contractor. The Subcontractor shall not assign any amounts due or to become due under this subcontract without written notice to the Contractor.
- 11.9 The Subcontractor warrants that all materials and equipment furnished and incorporated by him in the Project shall be new unless otherwise specified, and that all Work under this Subcontract shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these standards may be considered defective. The warranty provided in this Paragraph 11.9 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.
- 11.10 The Subcontractor agrees that if he should neglect to prosecute the Work deligently and properly or fail to perform any provisions of this Subcontract, the Contractor, after three working days' written notice to the Subcontractor, may, without prejudice to any other remedy he may have, make good such deficiencies and

may deduct the cost thereof from the payments then or thereafter due the Subcontractor, provided, however, that if such action is based upon faulty workmanship or materials and equipment, the Architect shall first have determined that the workmanship or materials and equipment are not in accordance with the Contract Documents.

- 11.11 The Subcontractor agrees that the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.
- 11.12 The Subcontractor shall furnish periodic progress reports on the Work as mutually agreed, including information on the status of materials and equipment under this Subcontract which may be in the course of preparation or manufacture.
- 11.13 The Subcontractor shall make any and all changes in the Work from the Drawings and Specifications of the Contract Documents without invalidating this Subcontract when specifically ordered to do so in writing by the Contractor. The Subcontractor, prior to the commencement of such changed or revised work, shall submit promptly to the Contractor written copies of the cost or credit proposal for such revised Work in a manner consistent with the Contract Documents.
- 11.14 The Subcontractor shall cooperate with the Contractor and other subcontractors whose work might interfere with the Subcontractor's Work, and shall participate in the preparation of coordinated drawings in areas of congestion as required by the Contract Documents, specifically noting and advising the Contractor of any such interference.
- 11.15 The Subcontractor shall cooperate with the Contractor in scheduling and performing his Work to avoid conflict or interference with the work of others.
- 11.16 The Subcontractor shall promptly submit shop drawings and samples as required in order to perform his work efficiently,

expeditiously and in a manner that will not cause delay in the progress of the Work of the Contractor or other Subcontractors.

- 11.17 The Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Subcontract. The Subcontractor shall secure and pay for all permits, fees and licenses necessary for the execution of the Work described in the Contract Documents as applicable to this Subcontract.
- 11.18 The Subcontractor shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts and workmen's compensation acts insofar as applicable to the performance of this Subcontract.
- 11.19 The Subcontractor agrees that all Work shall be done subject to the final approval of the Architect. The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.
- 11.20 The Subcontractor shall indemnify and hold harmless the Contractor and all of his agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Subcontractor or anyone directly or indirectly employed by him or anyone for whose acts he may be liable, regardless of whether it is caused in part by a party indemnified hereunder.
- 11.20.1 In any and all claims against the Contractor or any of his agents or employees by any employee of the Subcontractor, anyone

directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this Paragraph 11.20 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.

11.20.2 The obligations of the Subcontractor under this Paragraph 11.20 shall not extend to the liability of the Architect, his agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 12

CONTRACTOR'S RESPONSIBILITIES

- 12.1 The Contractor shall be bound to the Subcontractor by the terms of this agreement and of the Contract Documents between the Owner and the Contractor and shall assume toward the Subcontractor all the obligations and responsibilities that the Owner, by those Documents, assumes toward the Contractor, and shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, by those Documents, has against the Contractor, insofar as applicable to this Subcontract, provided that where any provision of the Contract Documents between the Owner and the Contractor is inconsistent with any provision in this Agreement, this Agreement shall govern.
- 12.2 The Contractor shall promptly notify the Subcontractor of all modifications to the Contract between the Owner and the

Contractor which affect this Subcontract and which were issued or entered into subsequent to the execution of this Subcontract.

- 12.3 Unless otherwise provided in the Contract Documents, the Contractor shall pay the Subcontractor each progress payment and the final payment under this Subcontract within three (3) working days after he receives payment from the Owner. The amount of each progress payment to the Subcontractor shall be equal to the percentage of completion allowed to the Contractor for the Work of this Subcontractor applied to the Contract Sum of this Subcontract, plus the amount allowed for materials and equipment suitably stored by the Subcontractor, less the aggregate of previous payments to the Subcontractor and less the percentage retained as provided in this Subcontract.
- 12.4 The Contractor shall permit the Subcontractor to obtain directly from the Architect evidence of percentages of completion certified on his account.
- 12.5 Unless otherwise provided in the Contract Documents, if the Architect fails to issue a Certificate for Payment or the Contractor does not receive payment for any cause which is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, on demand, a progress payment computed as provided in Paragraph 12.3 or the final payment as provided in Article 6.
- 12.6 The Contractor agrees that if he fails to make payments to the Subcontractor as herein provided for any cause not the fault of the Subcontractor, within seven days from the time payment should be made as provided in Paragraphs 12.3 and 12.5, the Subcontractor may, upon seven days' additional written notice to the Contractor, stop his Work without prejudice to any other remedy he may have.
- 12.7 The Contractor shall make no demand for liquidated damages for delay in any sum in excess of such amount as may be specifically named in this Subcontract, and no liquidated damages shall be assessed

against this Subcontractor for delays or causes attributed to other Subcontractors or arising outside the scope of this Subcontract.

- 12.8 The Contractor agrees that no claim for payment for services rendered or materials and equipment furnished by the Contractor to the Subcontractor shall be valid without prior notice to the Subcontractor and unless written notice thereof is given by the Contractor during the first ten days of the calendar month following that in which the claim originated.
- 12.9 The Contractor shall not give instructions or orders directly to employees or workmen of the Subcontractor except to persons designated as authorized representatives of the Subcontractor.
- 12.10 The Contractor shall cooperate with the Subcontractor in scheduling and performing his Work to avoid conflicts or interference in the Subcontractor's Work.
- 12.11 The Contractor shall permit the Subcontractor to be present and to submit evidence in any arbitration proceeding involving his rights.
- 12.12 The Contractor shall permit the Subcontractor to exercise whatever rights the Contractor may have under the Contract Documents in the choice of arbitrators in any dispute, if the sole cause of the dispute is the Werk, materials, equipment, rights or responsibilities of the Subcontractor; or if the dispute involves the Subcontractor and any other Subcontractor or Subcontractors jointly, the Contractor shall permit them to exercise such rights jointly. SHOP DRAWINGS
- a) Approval by the General Contractor and/or the Architect of any shop drawings submitted by this subcontractor shall not release this subcontractor from any requirements under the plans and specifications. If at any time after approval it becomes apparent

that the shop drawings stand further correction so as to conform with the plans and specifications, they shall be so corrected, along with any materials manufactured therefrom. Any damages sustained by the General Contractor shall be borne by the subcontractor.

ARTICLE 13

INTEREST

Any monies not paid when due to either party under this Subcontract shall bear interest at the legal rate in effect at the place of the Project.

ARTICLE 14

ARBITRATION

- 14.1 All claims, disputes and other matters in question arising out of, or relating to, this Subcontract, or the breach thereof, shall be decided by arbitration in the same manner and under the same procedure as provided in the Contract Documents with respect to disputes between the Owner and the Contractor except that a decision by the Architect shall not be a condition precedent to arbitration.
- 14.2 This Article shall not be deemed a limitation on any rights or remedies which the Subcontractor may have under any Federal or State mechanics' lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by him.

This Agreement executed the day and year first written above.

CONTRACTOR /s/

STAMFORD REALTY & CONSTRUCTION CO.

SUBCONTRACTOR /s/ Peter M. Santella, Pres.
PETER M. SANTELLA COMPANY

PETITIONER'S EXHIBIT "C"

TELEGRAM

TBA306(1640)(2-032908E091)PD 04/01/74 1639
ICS IPMMTZZ CSP
2033270330 TDMT STAMFORD CT 37 04-01 0439P EDT
FON 2039669595
PETER SANTELLA CO
4 CROSS ST PO BOX 87
NEW CANAAN CT 06840
FAILURE TO HAVE SUFFICIENT MANPOWER ON STAMFORD
BEEF JOB WITHIN 72 HOURS TO KEEP PACE WITH THE PROJECT
WILL NECESSITATE OUR HIRING ANOTHER ELECTRICAL CONTRACTOR AND BACKCHARGE YOUR ACCOUNT IN ACCORDANCE
WITH ARTICLE 11. 10 OF YOUR CONTRACT.
J CONSTANTINO ATLAS CONSTRUCTION CO

PETITIONER'S EXHIBIT "D"

PETER M. SANTELLA COMPANY, INCORPORATED ELECTRICAL CONTRACTORS

April 3, 1974

Atlas Construction Company 110 Lenox Avenue P. O. Box 2099 Stamford, Connecticut

Attn: Mr. Joe Constantino

Re: Stamford Dressed Beef

Gentlemen:

In reply to your telegram of April 1, 1974, the members of Local 501 are not working on the Stamford Dressed Beef job because the contract between Local 501 and the Peter M. Santella Company, Inc. provides that "Where wiring systems and equipment are required for lighting, power, heating, etc. during the period of construction of a building, these systems and equipment shall be installed, maintained and operated by electrical workers." Local 501 employees at present are not being given that work. As soon as this company provides that work to Local 501 employees, you may be assured that we will fulfill our contract complete and timely.

According to Article 2 of our contract, work specifically not included is:

#5 - Temporary Power and #6 - Standby Electrician for Temporary Power.

The above work will be done on a time and material basis.

We are ready to meet with you and resolve this problem.

Very truly yours,
PETER M. SANTELLA CO. . INC.

/s/ Peter M. Santella President

PETITIONER'S EXHIBIT "G"

RICE ELECTRICAL CONTRACTING COMPANY
222 Summer Street
Stamford, Conn. 05901
Phone: 203 324-9254

April 5, 1974

Herloy, Inc. 1435 Bedford Street Stamford, Conn. 06905

Attention: Mr. Lloyd Fowler

Re: Hilti Headquarters Stamford, Conn.

Dear Lloyd:

Members of Local 501 will not be working on the Hilti project because the Contract between Local 501 and Rice Electrical Contracting Company provides that where wiring systems and equipment are required for lighting, power, heat and so forth, during the period of construction of a building, these systems and equipment are to be installed, maintained and operated by Local 501 employees. Local 501 employees are not now given that work. As soon as this company provides that work to Local 501 employees, you may be assured that we will fulfill our contracts completely and finally.

We are ready to meet with you to resolve this problem.

Very truly yours,

RICE ELECTRICAL CONTRACTING CO.

/s/ C. G. Rice

CGR/jbp

PETITIONER'S EXHIBIT "H"

P.O. Box 2099, 110 Lenox Avenue Stamford, Conn. 06906

April 10, 1974

Mr. Chet Rice Rice Electrical Contracting Company 222 Summer Street Stamford, Connecticut

> Re: Hilti Headquarters Stamford, Connecticut

Dear Chet:

I have received a copy of your letter to Lloyd of April 5, 1974, with regard to your inability to perform the work because of action by Local 501. I have reviewed the contract, and cannot find any basis for your action. Herloy, Inc. has in no way violated its contract with you. You therefore, by failure to perform the work, are in violation of the contract. I would expect that Herloy, Inc. will hold you responsible for any damages, and in addition to that, The Atlas Construction Company will do the same. According to the law, we have the right to engage in a civil action against you for damages caused us as a result of your contribution to the project's lengthened completion time.

I would expect that you will do everything in your power to comply with your contract, and go back to work immediately.

National Labor Relations Board charges have been filed against Local 501 today, and I expect a field investigator will be on the site within the next five days to take testimony. Please be prepared to give him the facts of the matter as you see it.

Very truly yours,
THE ATLAS CONSTRUCTION CO.
Construction Manager

Joseph L. Gambino President

JLG/sw cc: L.M. Fowler File Field

PETITIONER'S EXHIBIT "I"

P.O. Box 2099, 110 Lenox Avenue Stamford, Conn. 06906

April 22, 1974

Rice Electrical Contracting Co. 222 Summer Street Stamford, Connecticut

Attn: Mr. Chester Rice

Re: Herloy, Inc.

Subj: Local 501 - Work Stoppage

Gentlemen:

This is to advise you that on Wednesday, April 17th, 1974, one of your employees asked permission of our Job Superintendent to operate the temporary power switch. We wish to advise you that we granted permission for your man to operate this switch at 8 a.m. and at 3:30 p.m. This is to advise you that we will continue to grant this permission so long as there is no charge. This permission is being granted as a result of the coercion employed by your firm and Local 501. We wish to advise you that you will be held responsible for all damages which may result from the coercion employed.

We wish to make it clear that should the electric switch require operation at times other than the normal starting and quitting time this switch will be operated by persons designated by us. No payments will be made to you in the event that you permit electricians to stay overtime to work on your contract or stand by the temporary service.

Very truly yours,
THE ATLAS CONSTRUCTION CO.
Construction Manager
/s/ Joseph L. Gambino

JLG:jj cc: Frank White Herloy, Inc. Field File

[EXCERPTS FROM] PETITIONER'S EXHIBIT "A"

AGREEMENT made this 20th day of April, 1973 by and between STAMFORD REALTY AND CONSTRUCTION COMPANY, a limited partnership, hereinafter called CWNER, and THE ATLAS CONSTRUCTION COMPANY, INC., of Stamford, Connecticut, hereinafter called CONSTRUCTION MANAGER or CM.

WITNESSETH:

WHEREAS, OWNER is in the process of planning, designing and constructing certain construction on property of OWNER located at 843 Canal Street, Stamford, Connecticut, which construction is outlined in part on schematic drawings, annexed hereto and made a part hereof as Exhibit A.

WHEREAS, OWNER desires to engage CM to act as Construction Manager for such construction and CM agrees to act as such Construction Manager for such construction.

NOW THEREFORE, for \$1.00 and other valuable considerations as hereinafter set forth, the parties agree as follows:

I. DUTIES OF THE CONSTRUCTION MANAGER

1.1 General

1.1.1 It shall be the responsibility of the CM to insure to the best of his ability and efforts that the project shall be built as economically as possible consistent with the objectives of the OWNER; in accordance with the plans and specifications; and be substantially completed and ready for occupancy by July 1, 1974. The CM recognizes the relationship of trust and confidence established between him and the

OWNER by this Agreement. He covenants with the OWNER to furnish his best skill and judgment, and to cooperate in forwarding the interests of the OWNER at all times.

1.1.2 The CM recognizes and understands that the completion of the construction is necessary for relocation of certain businesses, which businesses are being displaced by the Urban Redevelopment project in Stamford, Connecticut, and that the aforesaid businesses must vacate their present locations to be relocated in the construction herein planned. Therefore, the parties agree that time is of the essence in the completion of this construction.

1.2 Planning and Design

1.2.1 The CM will consult with, advise, assist and make recommendations to the OWNER, Architect and Engineers, or such other professionals engaged by OWNER, on all aspects of planning and design for the project.

1.3 Construction Management

The CONSTRUCTION MANAGER shall:

- 1.3.1 Establish, maintain and operate a temporary field construction facility on the site with competent personnel satisfactory to OWNER.
- 1.3.2 Supervise, direct and coordinate progress of various contractors or sub-contractors performing construction work and keep the OWNER

- at all times fully advised of such progress and of any obstacles or expected obstacles thereto.
- 1.3.3 Coordinate the progress of contractors and subcontractors to ensure proper sequence of work and to minimize interference.
- 1.3.4 Supervise the construction work to determine that it is being performed in accordance with the approved plans and specifications.
- 1.3.5 Provide inspection reports to OWNER and Architect of contractors' and sub-contractors' non-conformance with approved drawings and specifications.
- 1.3.6 Assure long lead-time material and equipment procurement items, as required, to assure uniform quality, standardization, cost savings,

[EXCERPTS FROM] PETITIONER'S EXHIBIT "E"

AGREEMENT

AGREEMENT made this 14th day of September, A.D. 1973, by and between HERLOY, INC., a corporation organized and existing under the laws of the state of Connecticut and having a place of business in the city of Stamford in the county of Fairfield in said state, hereinafter called the "contractor" and THE ATLAS CONSTRUCTION COMPANY, a corporation organized and existing under the laws of said state of Connecticut and having a place of business in said Stamford, hereinafter called the "Consultant";

WITNESSETH:

WHEREAS, Contractor has entered into an agreement with Soundview Farms, a Connecticut limited partnership, to furnish the labor and materials and perform the work required in the construction of improvements on certain premises in said Stamford pursuant to an agreement between said Soundview Farms and Hilti Incorporated dated

, 1973, hereinafter referred to as the "Project"; and

WHEREAS, Contractor has agreed to furnish said Soundview Farms efficient business administration and superintendence and to use its best effort to furnish at all times an adequate supply of workmen and materials and to perform the work in the best and most sound way and in the most expeditious and economical manner consistent with the interest of said Soundview Farms; and

WHEREAS, Contractor wishes to employ Consultant in an advisory capacity to assist the Contractor in the performance of its duties;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, contractor and consultant agree as follows:

- 1. Contractor employs Consultant to assist and advise in the preparation and revision of plans, specifications and engineering in connection with the Project. The Consultant will review the work of the architect and any other design professionals and call to the attention of the Contractor any aspect of the design which is detrimental to any aspect of the budget or schedule. In connection therewith, Consultant will furnish information to the Contractor and the design professional regarding alternative solutions which utilize different materials, products and construction techniques. All differences of opinion between Consultant and a design professional shall be immediately referred to Contractor for resolution.
- 2. Consultant shall prepare invitations for bids for construction services and supplies and will obtain such bids from subcontractors for submission to the Contractor with advice and recommendation as to the selection of subcontractors.
- 3. Consultant will maintain job records including checking of materials, equipment and labor entering into the work and keep detailed accounts necessary for proper financial management of the Project, including processing of requisitions and invoices and presenting same to Contractor for approval and payment.
- 4. Consultant shall maintain a current listing of independent contractors and subcontractors and if in the opinion of the Consultant any workmanship performed or materials or equipment furnished by such independent contractors or subcontractors does not conform to drawings and specifications or are in any way defective or if any independent contractor or subcontractor does fail to remedy any imperfections in his work or to supply sufficient number of properly

skilled workmen or satisfactory materials or equipment or to prosecute the work with promptness and diligence or to comply with any of the provisions of their contracts, Consultant shall bring such to the attention of the Contractor so that any such deficiency can be remedied.

- 5. Consultant in connection with the Project shall:
- (a) Supervise, direct, and coordinate the progress of various subcontractors performing construction work and keep the Contractor at all times fully advised of such progress and of any obstacles or expected obstacles thereto.
- (b) Coordinate the progress of independent contractors and subcontractors to insure proper sequence of work and to minimize interference.
- (c) Supervise the construction work to determine that it is being performed in accordance with the approved plans and specifications.
 - (d) Prepare time schedules for the construction * * *

RESPONDENT'S EXHIBIT 2

THE AMERICAN INSTITUTE OF ARCHITECTS AIA Document A401

SUBCONTRACT

Standard Form of Agreement Between Contractor and Subcontractor

Use with the latest edition of the appropriate AIA Documents as follows:

A101, Owner-Contractor Agreement -- Stipulated Sum

A107, Owner-Contractor Agreement -- Short Form for Small Construction Contracts

A111, Owner-Contractor Agreement -- Cost plus Fee

A201, General Conditions of the Contract for Construction.

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION

This document has been approved and endorsed by the American Subcontractors Association.

AGREEMENT

made this second day of October in the year Nineteen Hundred and Seventy-Three

BETWEEN the Contractor:

Herloy, Inc.

P.O. Box 2099

Stamford, Connecticut 06906

and the Subcontractor:

Rice Electrical Contracting Company

222 Summer Street

Stamford, Connecticut 06901

(Chet Rice 324-9254)

Project:

Hilti Headquarters

Owner:

Sound View Farms Cummings Point Road Stamford, Connecticut

Architect:

Bertram Lee Whinston

The Contractor and Subcontractor agree as set forth below.

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents for this Subcontract consist of this

Agreement and any Exhibits attached hereto, the Agreement-between

the Owner and Contractor dated

the Contract between the Owner and Contractor (General, Supplementary and other Conditions), Drawings, Specifications, all Addenda issued prior to execution of the Agreement between the Owner and Contractor, and all Modifications issued subsequent thereto.

All of the above documents are a part of this Subcontract and shall be available for inspection by the Subcontractor upon his request.

The only Addenda and Modifications issued prior to the execution of this Subcontract and applicable to it are as follows:

ARTICLE 2

THE WORK

The Subcontractor shall furnish all labor, tools, material, equipment, and supervisory personnel necessary to provide all electrical work for the Hilti Executive Offices in Stamford, Connecticut, in accordance with plans and specifications prepared by Bertram Lee Whinston, Architect. Drawings A-1 through A-14, L-1, PHE-1 (17-23-73) E-1 through E-7 (up to Addemdum 68 8-28-73), P-1 through P-4 (28 8-10-73), H-1 through H-5 (28 8-10-73) and

Specification Division 17-Electrical attached hereto, with the following exceptions:

- 1. This subcontractor shall have the option to substitute, with the General Contractor's approval, other <u>Lighting Fixtures</u> than those specified or shown. The objective of this option to substitute shall be to effect a reduction of the contract amount by \$10,000.00. Fixture details and other related information shall be supplied in sufficient time to permit the General Contractor a reasonable time to make a decision without delaying the project.
- 2. Temporary Power costs per Section 17A. 10 of the Specifications are not included in the lump sum price stated in Article 4. The methods and means of installing temporary power when directed by the Job Superintendent shall be as outlined in this Specification section.
- 3. And the electrical contractor, Rice Electrical Contracting Company, shall in no way be responsible for furnishing, management, maintenance or control of temporary power unless a separate agreement satisfactory to both parties is entered into concerning temporary power.

(Insert above a precise description of the Work covered by this Subcontract and refer to numbers of Drawings and pages of Specifications including Addenda and accepted Alternates.)

ARTICLE 3

TIME OF COMMENCEMENT AND COMPLETION

(Here insert the specific provisions that are applicable to this Subcontract including any information pertaining to notice to proceed or other method of notification for commencement of Work, starting and completion dates, or duration, and any provisions for liquidated damages relating to failure to complete on time.) Work shall be commenced within five (5) days from the date requested by the General Contractor and proceed continuously at a rate in keeping with the General Contractor's schedule, which becomes a part of this contract. This subcontractor will be obligated to complete the entire work when indicated on this schedule, except as may be amended by extensions of time granted by the General Contractor.

No extension of time will be valid without the Contractor's written consent after claim made by the Subcontractor in accordance with Paragraph 11.4.

ARTICLE 4

THE CONTRACT SUM

The Contractor shall pay the Subcontractor in current funds for the performance of the Work, subject to additions and deductions by Change Order, the total sum of One Hundred and Eighty Thousand (\$180,000.00) Dollars.

Temporary power shall be paid as an extra.

ARTICLE 5

PROGRESS PAYMENTS

The Contractor shall pay the Subcontractor monthly progress payments in accordance with Paragraphs 12.3 through 12.6 inclusive of this Subcontract.

(Here insert details on unit prices, payment procedures and date of monthly applications, or other procedure if on other than a monthly basis, consideration of materials and equipment safely and suitably stored at the site or other location agreed upon in writing, and any provisions for limiting or reducing the amount retained after the Work reaches a certain stage of completion which should be consistent with the Contract Documents.)

The subcontractor shall submit to the Contractor's office on or before the 25th day of each month, requisition for payment, in duplicate, covering the value of the work completed to the satisfaction of the Owner during that month. If said requisitions are not delivered by the subcontractor, as above noted, payment will be withheld for 30 days additional. The Contractor reserves the right to approve all payment requisitions as may be submitted by the subcontractor and to make such adjustment of said requisitions as may be required to make them properly reflect the true value of the work actually done by the subcontractor. Ten per cent (10%) retainage to be withheld till completion of the project. Retainer shall be limited to 50% of the project and not to exceed \$9,000.

Applications for monthly progress payments shall be in writing and in accordance with Subparagraph 11.2.1, shall state the estimated percentage of the Work in this Subcontract that has been satisfactorily completed and shall be submitted to the Contractor on or before the day of each month.

ARTICLE 6

FINAL PAYMENT

Final payment shall be due when the Work described in this Subcontract is fully completed and performed in accordance with the Contract Documents and is satisfactory to the Architect. Such payment shall be in accordance with Article 5 and with Paragraphs 12.3 through 12.6 inclusive of this Contract.

Before issuance of the final payment the Subcontractor, if required, shall submit evidence satisfactory to the Contractor that all payrolls, bills for materials and equipment, and all known indebtedness connected with the Subcontractor's Work have been satisfied.

ARTICLE 7

PERFORMANCE AND LABOR AND MATERIAL PAYMENT BONDS

(Here insert any requirement for the furnishing of bonds by the Subcontractor.)

None required.

TIME

- a) If the subcontractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the General Contractor may by written notice to the subcontractor, terminate his right to proceed with the work under contract. In such event, the General Contractor may take over the work and prosecute the same to completion, by contract or otherwise, and the subcontractor shall be liable to the General Contractor for any excess cost occasioned the General Contractor thereby, and for any actual damages occasioned by such delay. If the subcontractor's right to proceed is so terminated, the General Contractor may take possession of and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor.
- b) The right of the subcontractor to proceed shall not be terminated as provided in paragraph a) hereof, nor the subcontractor charged with damages because of any delays in the completion of the work due to acts of God, acts of the Government, acts of another subcontractor in performance of a contract, or fires at the site of the work, floods at the site of the work, strikes directly related to the subcontract work, and freight embargoes. Provided that the subcontractor within ten (10) days from the beginning of any such delay, unless the General

Contractor shall grant a further period of time, shall notify the General Contractor in writing of the causes of delay. The General Contractor shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgement the findings of fact justify such an extension, and his findings of fact thereon shall be conclusive on the parties hereto.

OVERTIME WORK

a) The subcontractor shall not be allowed to work at night or outside the regular working hours except in cases of emergency affecting public health and welfare, or unless written permission is granted by the General Contractor. If deemed necessary by the General Contractor, he shall provide proper supervision of all work performed outside the regular hours. If such work is being performed for the personal satisfaction of the subcontractor and no request has been made by the General Contractor, the subcontractor shall bear cost of supervision.

ARTICLE 8

TEMPORARY FACILITIES AND SERVICES

Unless otherwise provided in this Subcontract, the Contractor shall furnish and make available at no cost to the Subcontractor the following temporary facilities and services:

ARTICLE 9

INSURANCE

Prior to starting work, the Subcontractor shall obtain the required insurance from a responsible insurer, and shall furnish satisfactory evidence to the Contractor that the Subcontractor has complied with the requirements of this Article 9. Similarly, the

Contractor shall furnish to the Subcontractor satisfactory evidence of insurance required by the Contract Documents.

The Contractor and Subcontractor waive all rights against the Owner and all other Subcontractors for damages caused by fire or other perils to the extent covered by property insurance provided under the General Conditions, except such rights as they may have to the proceeds of such insurance.

(Here insert any insurance requirements and Subcontractor's responsibility for obtaining, maintaining and paying for necessary insurance, not less than limits as may be specified in the Contract Documents, shown below, or required by law. If applicable, this shall include fire insurance and extended coverage, public liability, property damage, employer's liability, and workmen's compensation insurance for the Subcontractor and his employees. The insertion should cover provisions for notice of cancellation, allocation of insurance proceeds, and other aspects of insurance.)

- a. The subcontractor shall maintain at his expense the following types of insurance, issued by companies acceptable to the Owner, at subcontractor's expense unless this Contract is on a cost plus fee basis:
 - (i) Workmen's Compensation Insurance, including occupational diseases, providing for the payment of benefits required by the laws of the State of Connecticut covering the persons employed by the contractor on work under this Contract. Employers' Liability Insurance with a minimum limit of \$500,000 is to be provided.
 - (ii) Comprehensive General Liability Insurance providing coverage on a personal injury basis with limits of at least:

Bodily Injury Liability: \$500,000 per person and \$500,000 per occurrence.

Property Damage Liability: \$100,000 per occurrence and \$300,000 aggregate.

Such coverage shall include protective liability (independent Contractors liability) contractual liability specifically covering Hold Harmless requirements and products liability (including completed operations). The products liability is to main in full force and effect for a period of two (2) years following job completion. In the event that the Contractor will be doing any excavating or grading work himself or through a subcontractor, coverage will also be specifically provided to include liability of the Contractor arising from explosion, collapse and underground damage.

(iii) Comprehensive automobile liability insurance providing coverage with limits of at least: Bodily Injury Liability: \$500,000 per person and \$500,000 each occurrence.

Property Damage Liability: \$100,000 per occurrence.

- b. The General Contractor may revise the types and limits of insurance at any time during the period of the Contract at his expense.
- c. The subcontractor shall furnish the Owner with certificates issued by the insurance company or companies issuing insurance policies required by this Article. Such certificates shall be provided prior to the commencement of any operations by the subcontractor. Such certificates shall provide that written notice shall be given to the General Contractor in the manner to be stipulated by the General Contractor thirty days prior to the

cancellation or modification of any such policy. All original insurance policies shall be made available for inspection by the General Contractor on request.

HOLD HARMLESS

The subcontractor agrees to indemnify and hold harmless the Owner, General Contractor, and Construction Manager against any costs incurred by the Owner, General Contractor, and Construction Manager (including without limitation amounts paid pursuant to judgements or settlements and as counsel fees) in consequence of any claim by a third party against the Owner, General Contractor, and Construction Manager, including without limitation any claim by an employee of the Owner, General Contractor, and Construction Manager, and any claim by a subcontractor or another Contractor, whether filed before or after final payment, based on actual or alleged damage to or destruction of property or injury to persons allegedly caused by the subcontractor or by their respective employees, in connection with the work.

ARTICLE 10

WORKING CONDITIONS

(Here insert any applicable arrangements concerning working conditions and labor matters for the Project.)

The subcontractor shall execute his work in full accordance with the Occupational Safety and Health Act, and all other regulatory agencies having jurisdiction, either Federal, State, or Local.

Extra Work

If agreement cannot be reached on a lump sum or unit price, extra work directed by the Contractor shall be compensated to the subcontractor on a direct cost plus 15%. Said 15% shall include overhead and profit.

ARTICLE 11

SUBCONTRACTOR'S RESPONSIBILITIES

- 11.1 The Subcontractor shall be bound to the Contractor by the terms of this Agreement and of the Contract Documents between the Owner and Contractor, and shall assume toward the Contractor all the obligations and responsibilities which the Contractor, by those Documents, assumes toward the Owner, and shall have the benefit of all rights, remedies and redress against the Contractor which the Contractor, by those Documents, has against the Owner, insofar as applicable to this Subcontract, provided that where any provision of the Contract Documents between the Owner and Contractor is inconsistent with any provision of this Agreement, this Agreement shall govern.
- 11.2 The Subcontractor shall submit to the Contractor applications for payment at such times as stipulated in Article 5 to enable the Contractor to apply for payment.
- 11.2.1 If payments are made on the valuation of Work done, the Subcontractor shall, before the first application, submit to the Contractor a schedule of values of the various parts of the Work aggregating the total sum of this Subcontract, made out in such detail as the Subcontractor and Contractor may agree upon, or as required by the Owner, and supported by such evidence as to its correctness as the Contractor may direct. This schedule, when approved by the Contractor, shall be used as a basis for Applications for Payment, unless it be found to be in error. In applying for payment, the Subcontractor shall submit a statement based upon this schedule.
- 11.2.2 If payments are made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site, or at some other location agreed upon writing, such

payments shall be in accordance with the terms and conditions of the Contract Documents.

- 11.3 The Subcontractor shall pay for all materials, equipment and labor used in, or in connection with, the performance of this Subcontract through the period covered by previous payments received from the Contractor, and shall furnish satisfactory evidence, when requested by the Contractor, to verify compliance with the above requirements.
- 11.4 The Subcontractor shall make all claims promptly to the Contractor for additional work, extensions of time, and damage for delays or otherwise, in accordance with the Contract Documents.
- 11.5 In carrying out his Work the Subcontractor shall take necessary precautions to protect properly the finished work of other trades from damage caused by his operations.
- 11.6 The Subcontractor shall at all times keep the building and premises clean of debris arising out of the operations of this Subcontract. Unless otherwise provided, the Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors.
- 11.7 The Subcontractor shall take all reasonable safety precautions with respect to his Work, shall comply with all safety measures initiated by the Contractor and with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property in accordance with the requirements of the Contract Documents. The Subcontractor shall report within three days to the Contractor any injury to any of the Subcontractor's employees at the site.
- 11.8 The Subcontractor shall not assign this Subcontract without the written consent of the Contractor, nor subcontract the whole of this Subcontract without the written consent of the Contractor, nor

further subcontract portions of this Subcontract without written notification to the Contractor when such notification is requested by the Contractor. The Subcontractor shall not assign any amounts due or to become due under this subcontract without written notice to the Contractor.

- 11.9 The Subcontractor warrants that all materials and equipment furnished and incorporated by him in the Project shall be new unless otherwise specified, and that all Work under this Subcontract shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these standards may be considered defective. The warranty provided in this Paragraph 11.9 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.
- 11.10 The Subcontractor agrees that if he should neglect to prosecute the Work diligently and properly or fail to perform any provisions of this Subcontract, the Contractor, after three working days' written notice to the Subcontractor, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payments then or thereafter due the Subcontractor, provided, however, that if such action is based upon faulty workmanship or materials and equipment, the Architect shall first have determined that the workmanship or materials and equipment are not in accordance with the Contract Documents.
- 11.11 The Subcontractor agrees that the Contractor's equipment will be available to the Subcontractor only at the Contractor's discretion and on mutually satisfactory terms.
- 11.12 The Subcontractor shall furnish periodic progress reports on the Work as mutually agreed, including information on the status of materials and equipment under this Subcontract which may be in the course of preparation or manufacture.

- 11.13 The Subcontractor shall make any and all changes in the Work from the Drawings and Specifications of the Contract Documents without invalidating this Subcontract when specifically ordered to do so in writing by the Contractor. The Subcontractor, prior to the commencement of such changed or revised work, shall submit promptly to the Contractor written copies of the cost or credit proposal for such revised Work in a manner consistent with the Contract Documents.
- 11.14 The Subcontractor shall cooperate with the Contractor and other subcontractors whose work might interfere with the Subcontractor's Work, and shall participate in the preparation of coordinated drawings in areas of congestion as required by the Contract Documents, specifically noting and advising the Contractor of any such interference.
- 11.15 The Subcontractor shall cooperate with the Contractor in scheduling and performing his Work to avoid conflict or interference with the work of others.
- 11.16 The Subcontractor shall promptly submit shop drawings and samples as required in order to perform his work efficiently, expeditiously and in a manner that will not cause delay in the progress of the Work of the Contractor or other Subcontractors.
- 11.17 The Subcontractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Subcontract. The Subcontractor shall secure and pay for all permits, fees and licenses necessary for the execution of the Work described in the Contract Documents as applicable to this Subcontract.
- 11.18 The Subcontractor shall comply with Federal, State and local tax laws, social security acts, unemployment compensation acts and workmen's compensation acts insofar as applicable to the performance of this Subcontract.

- 11.19 The Subcontractor agrees that all Work shall be done subject to the final approval of the Architect. The Architect's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents.
- 11.20 The Subcontractor shall indemnify and hold harmless the Contractor and all of his agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the Subcontractor's Work under this Subcontract, provided that any such claim, damage, loss, or expense (a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the Subcontractor or anyone directly or indirectly employed by him or anyone for whose acts he may be liable, regardless of whether it is caused in part by a party indemnified hereunder.
- 11.20.1 In any and all claims against the Contractor or any of his agents or employees by any employee of the Subcontractor, anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this Paragraph 11.20 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Subcontractor under workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 11.20.2 The obligations of the Subcontractor under this Paragraph 11.20 shall not extend to the liability of the Architect, his agents or employees arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, his agents or employees

provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 12

CONTRACTOR'S RESPONSIBILITIES

- 12.1 The Contractor shall be bound to the Subcontractor by the terms of this agreement and of the Contract Documents between the Owner and the Contractor and shall assume toward the Subcontractor all the obligations and responsibilities that the Owner, by those Documents, assumes toward the Contractor, and shall have the benefit of all rights, remedies and redress against the Subcontractor which the Owner, by those Documents, has against the Contractor, insofar as applicable to this Subcontract, provided that where any provision of the Contract Documents between the Owner and the Contractor is inconsistent with any provision in this Agreement, this Agreement shall govern.
- 12.2 The Contractor shall promptly notify the Subcontractor of all modifications to the Contract between the Owner and the Contractor which affect this Subcontract and which were issued or entered into subsequent to the execution of this Subcontract.
- 12.3 Unless otherwise provided in the Contract Documents, the Contractor shall pay the Subcontractor each progress payment and the final payment under this Subcontract within three (3) working days after he receives payment from the Owner. The amount of each progress payment to the Subcontractor shall be equal to the percentage of completion allowed to the Contractor for the Work of this Subcontractor applied to the Contract Sum of this Subcontract, plus the amount allowed for materials and equipment suitably stored by the Subcontractor, less the aggregate of previous payments to the Subcontractor and less the percentage retained as provided in this Subcontract.

- 12.4 The Contractor shall permit the Subcontractor to obtain directly from the Architect evidence of percentages of completion certified on his account.
- 12.5 Unless otherwise provided in the Contract Documents, if the Architect fails to issue a Certificate for Payment or the Contractor does not receive payment for any cause which is not the fault of the Subcontractor, the Contractor shall pay the Subcontractor, on demand, a progress payment computed as provided in Paragraph 12.3 or the final payment as provided in Article 6.
- 12.6 The Contractor agrees that if he fails to make payments to the Subcontractor as herein provided for any cause not the fault of the Subcontractor, within seven days from the time payment should be made as provided in Paragraphs 12.3 and 12.5, the Subcontractor may, upon seven days' additional written notice to the Contractor, stop his Work without prejudice to any other remedy he may have.
- 12.7 The Contractor shall make no demand for liquidated damages for delay in any sum in excess of such amount as may be specifically named in this Subcontract, and no liquidated damages shall be assessed against this Subcontractor for delays or causes attributed to other Subcontractors or arising outside the scope of this Subcontract.
- 12.8 The Contractor agrees that no claim for payment for services rendered or materials and equipment furnished by the Contractor to the Subcontractor shall be valid without prior notice to the Subcontractor and unless written notice thereof is given by the Contractor during the first ten days of the calendar month following that in which the claim originated.
- 12.9 The Contractor shall not give instructions or orders directly to employees or workmen of the Subcontractor except to persons designated as authorized representatives of the Subcontractor.

- 12.10 The Contractor shall cooperate with the Subcontractor in scheduling and performing his Work to avoid conflicts or interference in the Subcontractor's Work.
- 12.11 The Contractor shall permit the Subcontractor to be present and to submit evidence in any arbitration proceeding involving his rights.
- 12.12 The Contractor shall permit the Subcontractor to exercise whatever rights the Contractor may have under the Contract Documents in the choice of arbitrators in any dispute, if the sole cause of the dispute is the Work, materials, equipment, rights or responsibilities of the Subcontractor; or if the dispute involves the Subcontractor and any other Subcontractor or Subcontractors jointly, the Contractor shall permit them to exercise such rights jointly. SHOP DRAWINGS
- a) Approval by the General Contractor and/or the Architect of any shop drawings submitted by this subcontractor shall not release this subcontractor from any requirements under the plans and specifications. If at any time after approval it becomes apparent that the shop drawings stand further correction so as to conform with the plans and specifications, they shall be so corrected along with any materials manufactured therefrom. Any damages sustained by the General Contractor shall be borne by the subcontractor.

ARTICLE 13

INTEREST

Any monies not paid when due to either party under this Subcontract shall bear interest at the legal rate in effect at the place of the Project.

ARTICLE 14

ARBITRATION

- 14.1 All claims, disputes and other matters in question arising out of, or relating to, this Subcontract, or the breach thereof, shall be decided by arbitration in the same manner and under the same procedure as provided in the Contract Documents with respect to disputes between the Owner and the Contractor except that a decision by the Architect shall not be a condition precedent to arbitration.
- 14.2 This Article shall not be deemed a limitation on any rights or remedies which the Subcontractor may have under any Federal or State mechanics' lien laws or under any applicable labor and material payment bonds unless such rights or remedies are expressly waived by him.

This Agreement executed the day and year first written above.

CONTRACTOR	/s/
	HERLOY, INC.
SUBCONTRACT	OR /s/ Chester Rice
	RICE ELECTRICAL
	CONTRACTING COMPANY

RESPONDENT'S EXHIBIT 1A [EXCERPTS]

AGREEMENT
BETWEEN
WESTCHESTER-FAIRFIELD CHAPTER
NATIONAL ELECTRICAL
CONTRACTORS ASSOCIATION, INC.
and
LOCAL UNION NO. 501
INTERNATIONAL BROTHERHOOD
of
ELECTRICAL WORKER'S

AGREEMENT

AGREEMENT made this 1st day of June 1971 by and between the Westchester-Fairfield Chapter, National Electrical Contractors Association, Inc., a corporation organized and existing under the laws of the State of New York, on behalf of its members who employ workmen under the terms and conditions contained herein, and have signed a Letter of Assent to be bound by this Agreement for its duration as set forth below, and Local Union No. 501, I.B.E.W. It shall also apply to other individual employers who employ workmen under the terms of this Agreement and by virtues of signing a similar Letter of Assent, authorize the Westchester-Fairfield Chapter. National Electrical Contractors Association, Inc., as their collective bargaining agent for all matters contained herein or affecting this Agreement, including all amendments or revisions adopted pursuant thereto. The term "Employer" as used hereinafter shall mean the Westchester-Fairfield Chapter, National Electrical Contractors Association, Inc. The term "Union" as used hereinafter, shall mean Local Union No. 501 I.B. E. W.

ARTICLE I

Section 1. This agreement shall take effect June 1, 1971 and shall remain in effect until June 1, 1973, unless otherwise specifically provided for herein. It shall continue in effect from year to year thereafter, from June 1, through May 31 of each year, unless changed or terminated in the way later provided herein.

Section 5. There shall be a Labor-Management Committee of four representing the Union and four representing the Employer. It shall meet regularly at such stated times as it may decide. However, it shall also meet within 48 hours when notice is given by either party. It shall select its own Chairman and Secretary.

Section 6. All grievances or questions in dispute shall be adjusted by the duly authorized representatives of each of the parties to this agreement. In the event that these two are unable to adjust any matter within 48 hours, they shall refer the same to the Labor-Management Committee.

Section 7. All matters coming before the Labor-Management Committee shall be decided by majority vote. Four members of the Committee, two from each of the parties hereto, shall be a quorum for the transaction of business, but each party shall have the right to cast the full vote of its membership and it shall be counted as though all were present and voting.

ARTICLE II

Section 1a. Members of the Union shall not work for any employers except those who comply with the working rules later stated in this agreement. (However, this does not apply to regular maintenance, municipal or governmental work when this is not done by the Employer). Members of the Union shall not contract for any electrical work or carry a license for an employer.

Rule 27c. Where wiring systems and equipment are required for lighting, power, heat, etc., during the period of construction of a building, these systems and equipment shall be installed, maintained and operated by electrical workers. All work installed for light, heat and power shall be installed in a workmanlike manner and maintained in such manner for the duration of such light, heat and power. Risers shall be in conduit from floor to floor and safety fused switches shall be installed on each floor for light, heat and power supply. All open wiring shall be supported by insulators as required. No extension shall be over 50 feet from supply except by permission of the Business Manager.

MEMORANDUM OF DECISION

This is an action brought by the regional director of the National Labor Relations Board, seeking an injunction pursuant to § 10(1) of the National Labor Relations Act, 29 U.S.C. § 160(1), pending the Board's consideration of a charge that the respondent union, Local 501 of the International Brotherhood of Electrical Workers, is engaging in a secondary boycott in violation of §8(b)(4)(B) of the Act, 29 U.S.C. § 158(b)(4)(B). Two separate charges have been filed with the Board against Local 501. Complaints have not yet been issued. While the facts concerning the two charges vary slightly, the appropriateness of an injunction turns on issues common to both charges.

The evidence adduced at a hearing on April 26 was largely undisputed. Atlas Construction Co., Inc. of Stamford (Atlas) is functioning as the general contractor for the construction of a plant for the Stamford Dressed Beef Co. (hereafter "Stamford job") and an office building for Hilti, Inc. (hereafter "Hilti job"). The actual general contractors are Stamford Realty and Construction Co. (Stamford Realty) for the Stamford job and Herloy, Inc. for the Hilti job. Atlas, through its president, Joseph Gambino, acted as agent for Stamford Realty and Herloy in negotiating sub-contracts. The electrical sub-contractors are Peter M. Santella, Inc. for the Stamford job and Rice Electrical Contracting Co. for the Hilti job. Both Santella and Rice have signed documents evidencing their agreement to be bound by the terms of a collective bargaining agreement between a regional chapter of the National Electrical Contractors Association, Inc. and Local 501. The employees of Santella and Rice are members of Local 501.

The collective bargaining agreement contains the following provision concerning temporary power: Rule 27c. Where wiring systems and equipment are required for lighting, power, heat, etc., during the periods of construction of a building, these systems and equipment shall be installed, maintained and operated by electrical workers.

Gambino testified that in negotiating the electrical subcontracts he sought to exclude the installation, operation, and
maintenance of temporary power from the contracted work. The
sub-contract with Santella specifically excludes "temporary wiring" and "standby electrician for temporary power." The subcontract with Rice specifically excludes "Temporary Power" and
further provides that "the electrical contractor, Rice . . . shall
in no way be responsible for furnishing, management, maintenance
or control of temporary power unless a separate agreement satisfactory to both parties is entered into concerning temporary power."

The apparent conflict between the temporary power provisions of the collective bargaining agreement and those of the electrical sub-contracts precipitated a dispute over the operation of the switch controlling the temporary power at both sites. Gambino instructed his employees, who are not electricians, to operate the switch. A representative of Local 501 informed Santella and Rice that the performance of this work by those not members of Local 501 was in violation of the collective bargaining agreement.

At the Stamford job, Local 501 removed its workers from the site, invoking a clause of the collective bargaining agreement that provides, "Members of the Union shall not work for any employers except those who comply with the working rules later stated in this agreement." The workers subsequently returned after Santella agreed to employ a member of Local 501 to remain on the site as long as temporary power is on. This worker will check circuits

but will not actually operate the switch. This arrangement apparently was developed at a meeting of representatives of the union and the contractors' association. At the Hilti job, Local 501 also removed its workers, but they subsequently returned after Atlas agreed to let a Rice employee operate the switch between the hours of 8:00 a.m. and 3:30 p.m. Thereafter Atlas withdrew this permission, and there remains the threat of a work stoppage by Local 501 unless Rice at least follows the formula adopted by Santella.

The Board contends that Local 501 is engaging in a secondary boycott aimed at coercing Atlas (or the actual general contractors or perhaps the owners) to give the temporary power work to Santella and Rice. In the Board's view, Santella and Rice are neutrals in the dispute. Local 501 contends that its only dispute is with Santella and Rice, to require them to abide by the terms of the collective bargaining agreement.

At the outset, it may be observed that whether Santella and Rice are in violation of the collective bargaining agreement is not beyond all dispute. Local 501 views the temporary power provision of the agreement as a work preservation clause and reads the contract as if it explicitly provided that the employer will not undertake any subcontract that fails to include temporary power in the work being subcontracted. It may well be the contract ought to be construed as if it so provided, given the pattern of the trade whereby temporary power has traditionally been handled by employees of the electrical subcontractor. It is possible, however, to read the clause as only prohibiting a sub-contractor whose work includes temporary power from giving such work to non-electrical workers.

In this case, however, there is no indication that either Santella or Rice dispute that the performance of temporary power work by non-electrical workers at the Stamford and Hilti jobs is a breach of the collective bargaining agreement. Both employers specifically mentioned the temporary power clause of the collective bargaining agreement in explaining to Atlas and Herloy why Local 501 was walking off the two jobs. In any event, the interpretation of the collective bargaining agreement urged by Local 501, if not required, is certainly sufficiently plausible to support a conclusion that they have a legitimate dispute with Santella and Rice concerning the union's contract with these employers.

Whether the union's attempt to secure compliance with its understanding of the collective bargaining agreement is a secondary boycott turns on the appropriate application of what has come to be known as the "right of control" test. The Board takes the position that where the right of control of disputed work is, at the time of the dispute, not within an employer, then any coercive pressure directed to him is a violation of § 8(b)(4)(B). Here, the Board contends, once the sub-contracts were executed, the decision to assign the temporary work was reserved to the general contractor, and the sub-contractors could take no unilateral action to give this work to their employees.

The Board has repeatedly sought to assert secondary activity on the basis of a per se right of control test, and has been rebuffed by the Courts of Appeals of five circuits, all of which have viewed right of control as only one relevant but not the determining factor in identifying secondary activity. Local No. 742, United Brotherhood of Carpenters and Joiners of America v. NLRB, 444 F. 2d 895 (D. C. Cir. 1971); Beacon Castle Square Building Corp. v. NLRB, 406 F. 2d 188, 192 n. 10 (1st Cir. 1969); NLRB v. Local Union No. 164, IBEW, 388 F. 2d 105, 109 (3d Cir. 1968); American Boilers Manufacturers Assn. v. NLRB, 404 F. 2d 556, 560-61 (8th Cir.

1968); Western Monolithics Concrete Products, Inc. v. NLRB,
446 F. 2d 522, 526 (9th Cir. 1971). See also Danielson v. Painters
District Council No. 20, 305 F. Supp. 1108 (S.D. N.Y. 1969.) 1/
The ultimate test, as stated by the Supreme Court, is "whether,
under all the surrounding circumstances, the Union's objective was
preservation of work for [unit] employees, or whether the agreements
and boycott were tactically calculated to satisfy union objectives
elsewhere." National Woodwork Manufacturers Assn. v. NLRB,
386 U.S. 612, 644 (1967).

In this case the union's objective is preservation of work that it has traditionally performed. Moreover, it is apparent from the arrangement it has reached with Santella, that it can secure at least the economic benefit of the bargain it has made with the employer without any action on the part of the general contractor.

Since this case is devoid of surrounding circumstances that would justify a conclusion of secondary activity, an unfair labor practice could be found only by a per se application of the Board's "right of control" test. It may be that this approach is more plausible where the employer did not participate in negotiating the sub-contract that is alleged to violate his agreement with the union, see George Koch Sons. Inc. v. NLRB, ____ F.2d ____ (4th Cir. Dec. 14, 1973). But when an employer is subjected to coercive pressure after he has negotiated the contract that places him in violation of his own agreement with a union, that pressure, in the absence of activity directed at third parties, is primary within the meaning of § 8(b)(4)(B).

There remains for determination the appropriateness of an injunction in these circumstances. While this Court is not the forum for determining ultimately whether an unfair labor practice has occurred and should certainly leave disputed factual matters for the

Board, it need not issue an injunction where the Board's entitlement rests on a legal theory which "the district court is convinced . . . is wrong" and which is unlikely to be accepted by the Court of Appeals for this Circuit. Danielson v. Joint Board of Coat, Suit and Allied Workers' Union, ILGWU, ____F.2d ____ (2d Cir. Feb. 27, 1974); see also McLeod v. Business Machine & Office Appliance Mechanics Conference Board, 300 F.2d 237, 242 n. 17 (2d Cir. 1962).

Accordingly, the injunction is denied, and the regional directors' petition is dismissed.

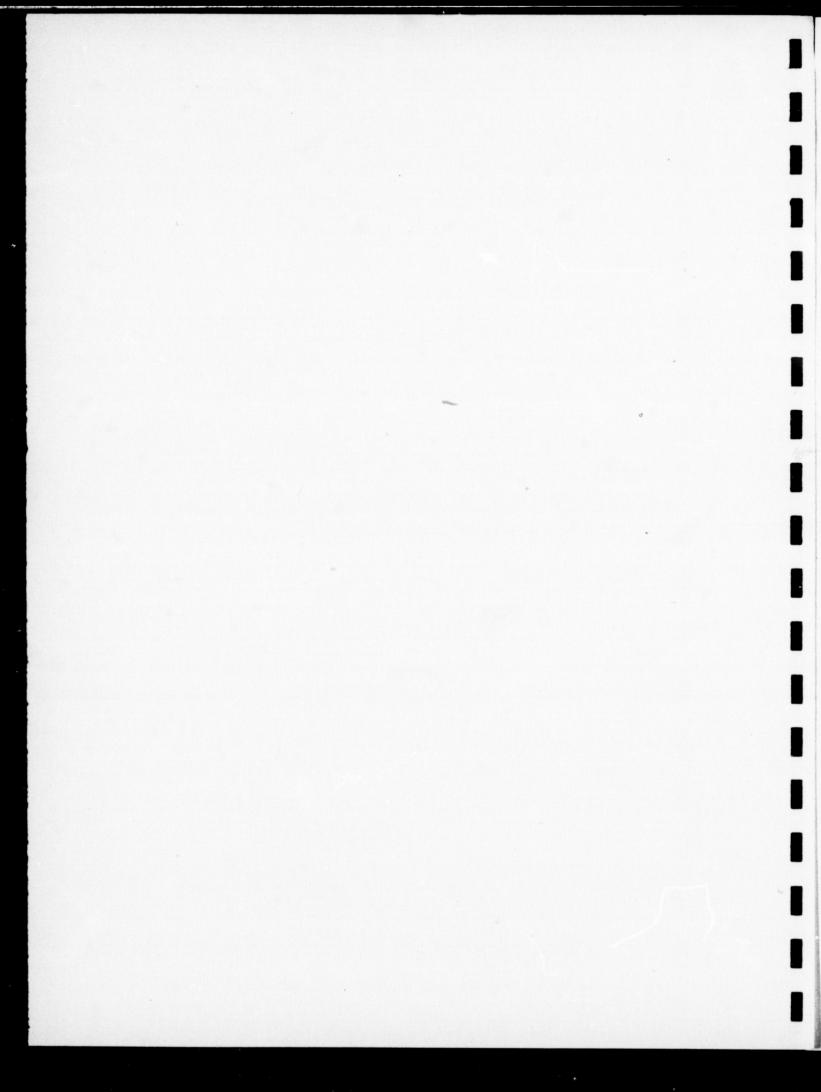
Dated at New Haven, Connecticut, this 21 day of May, 1974.

Jon O. Newman
Jon O. Newman
United States District Judge

FOOTNOTE

The Board seeks to draw support from the Second Circuit's summary affirmance without opinion of the Board's decision in Asbestos Workers Local 12 (Westinghouse Electric Corp.), 193

NLRB 40, 78 LRRM 1140, aff'd 80 LRRM 2028. Wholly apart from the fact that in this Circuit, summary affirmances lack precedential value, Local Rule § 0.23 of the United States Court of Appeals for the Second Circuit, see United States v. Diggs, _____ F.2d ____, ____ n. 3 (2d Cir. May 8, 1974), the decision in Asbestos Workers is an unlikely vehicle for endorsement of a per se "right of control" rule, since the Board's brief to the Court of Appeals in that case specifically distinguished the cases that have rejected the per se rule on the ground that in Asbestos Workers "the Board did look at all of the surrounding circumstances, only one of which was [third parties'] right of control."



JUDGMENT

This cause having come on for consideration on a Motion for Temporary Injunction and the Court having rendered its Memorandum of Decision under date of May 21, 1974, denying the injunction and dismissing the regional director's petition,

It is ORDERED and ADJUDGED that the injunction be and is hereby denied and that this action be and is hereby dismissed.

Dated at New Haven, Connecticut, this 22nd day of May, 1974.

SYLVESTER A. MARKOWSKI CLERK, UNITED STATES DISTRICT COURT

By

/s/ Deputy in Charge